

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

DESTINY GREEN
355 KAUFMANN AVE
DUBUQUE IA 52001

RETIREMENT INVESTMENT CORP
HERITAGE MANOR
4885 ASBURY RD
DUBUQUE IA 52001

Appeal Number: 04A-UI-00034-BT
OC: 11/30/03 R: 04
Claimant: Appellant (4/R)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

871 IAC 24.27 – Voluntary Quit of Part-Time Employment

STATEMENT OF THE CASE:

Destiny Green (claimant) appealed an unemployment insurance decision dated December 24, 2003, reference 01, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Heritage Manor (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 26, 2004. The claimant participated in the hearing. The employer participated through Joyce Denczek, Administrator.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as part-time kitchen staff from July 28, 2003 through September 29, 2003. The claimant previously reduced her schedule to specific days due to problems with childcare, but she was working approximately 12 to 15 hours per week at the time she separated. The claimant's niece was providing care for the claimant's children and her niece was going to start working. Consequently, the claimant informed her employer she did not know what hours she could work. The employer asked the claimant if she could finish out the schedule and the claimant agreed to do so, but she failed to show up for her shift on September 29, 2003. The claimant wanted to work in December 2003 and January 2004 and she made her employer aware of this fact but the employer never called the claimant about it. The claimant did not bother to contact the employer to inquire further about additional work.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer or if the employer discharged her for work-connected misconduct. Iowa Code Sections 96.5-1 and 96.5-2-a.

The claimant contends she was laid off work but the facts show she voluntarily quit her employment. A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant demonstrated her intent to quit and she acted to carry it out when she advised the employer she did not know when she could work due to problems with childcare. The claimant voluntarily changed her contract of hire and it was solely that reason why she was no longer working. The employer had no obligation to accommodate the claimant. Furthermore, the claimant contends she wanted to work through the holiday season but admitted she never called the employer or inquired further about it. Had the claimant wanted to work, it was her obligation to pursue it. Her separation from employment was without good cause attributable to the employer.

However, an individual who quits part-time employment without good cause, yet is otherwise monetarily eligible based on wages paid by other base-period employers, shall not be disqualified for voluntarily quitting the part-time employment. However, benefit payments shall not be based on wages paid by the part-time employer and charges shall not be assessed against the part-time employer's account. Once the individual has met the requalification requirements, the wages paid from the part-time employment can be used for benefit payment purposes. 871 IAC 24.27.

Based on this regulation, this matter is remanded to the Claims Section to determine whether the claimant is monetarily eligible to receive unemployment insurance benefits when the wage credits the claimant earned while working for the employer are not used in determining the claimant's monetary eligibility or her maximum weekly benefit amount.

DECISION:

The unemployment insurance decision dated December 24, 2003, reference 01, is modified in favor of the appellant. The claimant voluntarily quit her part-time employment for disqualifying

reasons. Therefore, the employer's account will not be charged. This matter is remanded to the Claims Section to determine whether the claimant is monetarily eligible to receive unemployment insurance benefits and to determine what her maximum weekly benefit amount is when the wage credits the claimant earned from the employer are not taken into consideration to determine these two issues.

sdb/b