

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**LIDIA M LOPEZ**  
Claimant

**APPEAL NO. 08A-UI-08703-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FMC/MARC INC**  
**ARBIES**  
Employer

**OC: 11/18/07 R: 02**  
**Claimant: Respondent (2-R)**

Iowa Code Section 96.4(3) – Still Employed Same Hours and Wages  
Iowa Code Section 96.5(1) – Voluntary Quit  
871 IAC 24.27 – Voluntary Quit of Part-time Employment

**STATEMENT OF THE CASE:**

Employer filed a timely appeal from the September 19, 2008, reference 04, decision that allowed benefits. After due notice was issued, a hearing was held on November 12, 2008. Claimant participated. Jennifer Coe of Talx UC eXpress/Johnson & Associates represented the employer and presented testimony through Dana Accola, Unit Director. Spanish-English interpreter Ike Rocha assisted with the hearing. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibit One and Department Exhibit D-1 into evidence.

**ISSUES:**

Whether the claimant's voluntary quit of the part-time employment was for good cause attributable the employer.

Whether the claimant was partially unemployed from July 6, 2008, when she established her "additional claim" for benefits, until August 8, 2008, when she voluntarily quit.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Lidia Lopez was employed by FMC/Marc Inc., d/b/a Arbies, on a part-time basis from December 5, 2007 until August 8, 2008, when she voluntarily quit. Ms. Lopez last performed work for the employer on August 3, 2008. During the last two months of the employment, Ms. Lopez was experiencing arthritic pain in her feet. Ms. Lopez's foot pain made it necessary for her to reduce her hours of employment at Arbies. In addition, Ms. Lopez's medical condition caused her to tire easily and made it difficult for her to open heavy doors in the workplace.

On July 27 or 28, 2008, Ms. Lopez notified the employer that she was having problems with her ankle that made it difficult for her to stand and to work. Ms. Lopez told the employer that she had required a cortisone shot in her feet. Ms. Lopez indicated that she needed to miss a few

days of work in connection with her foot condition. Ms. Lopez provided the employer with medical documentation of her condition. The employer authorized the time off. The employer had previously granted Ms. Lopez's request for fewer and shorter hours. On August 3, Ms. Lopez returned to work. On that day, Ms. Lopez notified the employer that it was too painful for her to stand three or four hours during a shift.

On August 8, Ms. Lopez notified the employer that she was quitting the employment. Ms. Lopez did not ask the employer for additional accommodations. The employer was willing to provide additional accommodations. A medical professional had not recommended that Ms. Lopez quit the employment.

Shortly after Ms. Lopez voluntarily quit the employment, she commenced full-time college coursework. Ms. Lopez concedes that her college course schedule would have prevented her from continuing in the employment at Arbies.

Ms. Lopez established an "additional claim" for benefits that was effective July 6, 2008. At the time, Ms. Lopez was still employed by Arbies and the only changes in the conditions of employment were the reduced hours requested by Ms. Lopez. The employer continued to make the same work available to Ms. Lopez up to the date of the quit that the employer had made available at the start of the employment.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5-1-d provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

Workforce Development rule 24.26(6) provides that a claimant will be deemed to have involuntarily separated from the employment for good cause attributable to the employer under the following conditions:

Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

The weight of the evidence indicates that Ms. Lopez's arthritic condition was non-work-related, but was aggravated by the standing involved in the employment. The evidence fails to establish that Ms. Lopez's medical condition made it necessary for her to leave the employment to avoid serious danger to her health. The evidence indicates that the employer had accommodated Ms. Lopez's medical condition and was willing to provide additional accommodations. The evidence indicates that Ms. Lopez had not requested any additional accommodations. The evidence indicates that Ms. Lopez's quit was not upon the advice of a physician. Ms. Lopez has not returned to the employer since the separation to offer her services.

The evidence indicates that Ms. Lopez's full-time college coursework likely played a role in Ms. Lopez's decision to leave the employment. Where a person quits employment to go to school, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(26).

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Lopez voluntarily quit the part-time employment without good cause attributable to the employer. Accordingly, Ms. Lopez would be disqualified for benefits based on wage credits earned from this employment until she has earned 10 times her weekly benefit amount since separating from the employment. The employer will not be charged for benefits paid to Ms. Lopez.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times her weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage

credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

This matter will be remanded for redetermination of Ms. Lopez's benefits in light of the voluntary quit without good cause attributable to the employer.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(1)a, (2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Where a person is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis

different from the contract for hire, such claimant cannot be considered partially unemployed. 871 IAC 24.23(26).

Ms. Lopez established an "additional claim" for benefits that was effective July 6, 2008. At the time, Ms. Lopez was still employed by Arbies and the only changes in the conditions of employment were the reduced hours requested by Ms. Lopez. The employer continued to make the same work available to Ms. Lopez up to the date of the quit that the employer had made available at the start of the employment. Accordingly, Ms. Lopez could not be considered partially unemployed from the time she established her additional claim to the time she voluntarily quit the employment on August 8, 2008. Ms. Lopez was not eligible for benefits during the period of July 6, 2008 through August 8, 2008.

This matter will be remanded to the Claims Division for determination of the claimant's work ability and availability since she separated from the employment at Arbies on August 8, 2008. There is no indication that the claimant has been approved for department approved training since she established the additional claim for benefits that was effective on July 6, 2008. Claimant indicated she is again employed on a part-time basis, which employment would most likely cause her not to meet the availability requirements of Iowa Code section 96.4(3). In addition, the impact of the claimant's health condition on her work ability and availability must be determined. The impact of the claimant's college coursework on her work availability must also be determined.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

**DECISION:**

The Agency representatives September 19, 2008, reference 04, decision is reversed. The claimant was not partially unemployed from her part-time employment from July 6, 2008 until her voluntary quit on August 8, 2008 and was not eligible for benefits during that period. The claimant voluntarily quit the part-time employment without good cause attributable to the employer.

The matter is remanded to the Claims Division for redetermination of the claimant's benefits in light of the voluntary quit without good cause from the part-time employment. The redetermination should include determination of whether the claimant has been overpaid benefits.

This matter is also remanded to the Claims Division for determination of the claimant's work ability and availability since she separated from the employment at Arbies on August 8, 2008.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs