

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EMILY J KERN
Claimant

APPEAL NO: 10A-UI-14376-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**AHF/KENTUCKY – IA /
WILLOW GARDENS CARE CENTER**
Employer

OC: 07/04/10
Claimant: Appellant (4/R)

Section 96.5-1-c – Voluntary Leaving/Care of Ill or Injured Family Member
Section 96.5-1 – Voluntary Leaving/Requalification

STATEMENT OF THE CASE:

Emily J. Kern (claimant) appealed a representative's October 15, 2010 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from AHF/Kentucky – IA / Willow Gardens Care Center (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 29, 2010. The claimant participated in the hearing. Angie Kausalick appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit for a good cause attributable to the employer? Has she requalified after the separation?

FINDINGS OF FACT:

The claimant started working for the employer on March 3, 2010. She worked full time as a certified nursing aide (CNA) in the employer's nursing home on the second shift. Her last day of work was March 30, 2010. She quit effective March 31 to stay with and care for her grandmother who had fallen and was hospitalized through the end of May 2010. She did not seek to return to the employment with the employer; rather, she accepted other employment that began on or about May 16, 2010 with another employer, Res-Care Iowa, Inc., with which she could set her own hours. The employment with Res-Care ended on or about July 5. She earned \$2,335.00 in her employment with Res-Care. She then began employment with another employer, Carlos O'Kelley's of Marion, on or about August 1; that employment ended on or about September 15, 2010. She earned \$576.00 in her employment with Carlos O'Kelley's.

The claimant established an unemployment insurance benefit year effective July 4, 2010. Her weekly benefit amount was calculated to be \$251.00.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Where the quit is for a family member's medical or health reasons, the quit is disqualifying at least until the family member has recovered and seeks to return to work but no work is available with the employer. Iowa Code § 96.5-1-c; 871 IAC 24.26(8).

871 IAC 24.25 provides that, 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 from whom the employee has separated. The claimant did express her intent not to return to work with the employer. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she establishes that she voluntarily quit for good cause. Iowa Code § 96.6-2.

A voluntary quit can be for good cause attributable to the employer even if the employer is free from any negligence or wrongdoing. Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956); Shontz v. IESC, 248 N.W.2d 88 (Iowa 1976). The claimant's original voluntary quit was for a good family medical reason, but in order for the quit to become attributable to the employer, the claimant must also demonstrate that she returned to work, but no work was available. She did not do this, but rather she sought and accepted other employment, and so cannot qualify under the provisions regarding a quit to care for a family member.

Iowa Code § 96.5-1-g 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:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The administrative law judge further concludes that after the third quarter 2010, the wage credits reported by subsequent employers shows that the claimant has requalified for benefits since the separation from this employer. Accordingly, as of October 3, 2010 benefits are allowed and the account of the employer shall not be charged.

An issue as to whether the claimant had separations from two subsequent employers could affect the claimant's eligibility arose as a result the hearing. These issues are outside of the administrative law judge's jurisdiction in this case, the matter will be remanded for an investigation and preliminary determination on those separations. 871 IAC 26.14(5). Further, the Agency record indicates that the claimant was filing weekly claims during the period in August and September in which her wage credits with Carlos O'Kelley's were earned, but no

wages were reported by the claimant on those weekly claims, which should have been reported to reduce her benefit eligibility. The administrative law judge is without jurisdiction to make a ruling on the issue. This matter is remanded to the Investigations and Recovery Unit to determine if the claimant was receiving wages that she failed to report, and if there was any resulting overpayment of benefits.

DECISION:

The representative's October 15, 2010 decision (reference 02) is modified in favor of the claimant. The claimant voluntarily left her employment in order to care for an ill or injured family member, but did not seek to return to work. The claimant voluntarily left her employment without good cause attributable to the employer, but she has requalified for benefits since the separation. As of October 3, 2010 benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged. The matter is remanded to the Claims Section for investigation and determination of the two subsequent employers' separation issues. The case is further remanded for a review and determination on the unreported wage issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css