

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a part-time sales associate from October 11, 2004 until he voluntarily quit effective December 31, 2004. The claimant averaged between 36 and 39 hours per week but was part time. The claimant quit to go back to school at Buena Vista University in Storm Lake, Iowa. When the claimant was hired he informed the employer that he would be going to school and would have to quit. However, when the claimant quit, continuing work was available to him. The claimant was not laid off for a lack of work nor was he discharged for disqualifying misconduct. There is no other reason for the claimant's quit. According to Iowa Workforce Development records, the claimant has earnings from other employers as follows: \$208.00 in the first quarter of 2005 and \$145.00 in the second quarter of 2005 from Lordanou, Inc.; \$418.00 in the second quarter of 2004 from Wells Dairy, Inc.; and military pay in the amount of \$8,190.00 in the third quarter of 2004 and \$9,214.00 in the second quarter of 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. His separation from the employer herein was potentially disqualifying but because it was from part-time employment and the claimant is otherwise monetarily eligible to receive unemployment insurance benefits, the claimant is not disqualified to receive unemployment insurance benefits. Any unemployment insurance benefits to which the claimant is entitled shall not be based on wages paid by the part-time employer herein and benefit charges shall not be accessed against the account of the part-time employer herein.

Iowa Code section 96.5-1 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.

871 IAC 24.25(26) provides:

Voluntary quit without good cause. 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 employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(26) The claimant left to go to school.

871 IAC 24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits

following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

The parties agree, and the administrative law judge concludes, that the claimant left his employment voluntarily effective December 31, 2004. The issue then becomes whether the claimant left his employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has a burden to prove that he has left his employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with good cause attributable to the employer. The evidence establishes that the only reason that the claimant left his employment was to return to school and this is not good cause attributable to the employer. The evidence does establish that the claimant informed the employer that he would be leaving for school and would be quitting. However, the evidence also establishes that work remained for the claimant had he not quit and that he was not laid off or discharged. The administrative law judge does not believe that informing the employer that he is going to quit to go back to school and then take the employment and then quit, is a voluntarily quit with good cause attributable to the employer. There is no evidence that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental or that he was subjected to a substantial change in his contract of hire. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily without good cause attributable to the employer.

Ordinarily, the claimant's voluntarily quit without good cause attributable to the employer would disqualify the claimant to receive unemployment insurance benefits. However, Workforce Development records indicate that the claimant is otherwise monetarily eligible to receive unemployment insurance benefits based on wages paid by other base period employers, here, the military. Since the claimant is otherwise monetarily eligible to receive unemployment insurance benefits he is not disqualified to receive such benefits. However, benefit payments for the claimant shall not be made based on wages paid by the part-time employer herein nor shall benefit charges be assessed against the account of the part-time employer herein. Unemployment insurance benefits are allowed to the claimant provided he is otherwise eligible but any unemployment insurance benefits to which the claimant is entitled shall not be based on wages paid by the part-time employer herein and any such benefits shall not be charged against the account of the part-time employer herein. The administrative law judge concludes that the other wages from other employers is sufficient and that removing the wages from the part-time employer herein will not change the claimant's weekly benefit amount and therefore it is not now necessary to remand this matter for reconsideration of the claimant's weekly benefit amount after removing the wages from the part-time employer herein from such consideration.

DECISION:

The representative's decision of September 23, 2005, reference 04, is modified. The claimant, Brysen J. Sneller, is entitled to receive unemployment insurance benefits, provided he is otherwise eligible, because although he left his employment voluntarily without good cause attributable to the employer, the employment was part time and he is otherwise monetarily eligible to receive unemployment insurance benefits based on wages from other base period employers.

dj/kjw