

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DUANE R JASPER
Claimant

SEVENTH AVENUE INC
Employer

APPEAL 19A-UI-02601-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/17/19
Claimant: Respondent (4)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(1)g – Voluntary Leaving/Requalification
Iowa Code § 96.5(12) – Supplemental Part-time Employment
Iowa Admin. Code r. 871-24.27 – Voluntary Quitting – Part-time Employment

STATEMENT OF THE CASE:

On March 26, 2019, Seventh Avenue, Inc. (employer) filed an appeal from the March 19, 2019, reference 02, unemployment insurance decision that allowed benefits based upon the determination Duane R. Jasper (claimant) was separated from employment when he was laid off. The parties were properly notified about the hearing. A telephone hearing was held on April 15, 2019. The claimant did not answer when called at the number registered and did not participate. The employer participated through Employment Coordinator Teah Shirk. No exhibits were admitted into the record. The administrative law judge took official notice of the administrative record, specifically the claimant's wage history (WAGE-A) and the fact-finding documents.

ISSUES:

Did claimant voluntarily quit the part-time employment with good cause attributable to the employer?

Has the claimant requalified or is he otherwise monetarily eligible for benefits?

Is the employer liable for benefit charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part-time as a Seasonal Forklift Driver beginning on December 2, 2014, and was separated from employment on December 22, 2018, when he requested to be laid off. In the years the claimant had worked for the employer, he would work from September through December and then was laid off for the season.

The claimant most recently returned to employment on September 13, 2018. The employer had notified its employees that it had taken on additional catalogs and was busier than normal. As a result, the employer did not have seasonal layoffs after the holiday season and continues to have work available. However, the claimant requested to be laid off on December 22, 2018 which the employer granted.

While he was employed with the employer, the claimant also had full-time employment. He filed his claim for benefits effective February 17, 2019, following a separation from his full-time position. The administrative record shows that the claimant has not requalified for benefits since this separation but reflects he appears to be otherwise monetarily eligible for benefits after this part-time employer's wages are excluded from the base period.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer, and has not requalified but appears to be otherwise monetarily eligible.

Iowa Code section 96.5 provides, in relevant part:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

...

12. Supplemental part-time employment. If the department finds that an individual is disqualified for benefits under subsection 1 or 2 based on the nature of the individual's separation from supplemental part-time employment, all wages paid by the supplemental part-time employer to that individual in any quarter which are chargeable following a disqualifying separation under subsection 1 or 2 shall not be considered wages credited to the individual until such time as the individual meets the conditions of requalification as provided for in this chapter, or until the period of disqualification provided for in this chapter has elapsed.

Iowa Admin. Code r. 871-24.27 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 Form 65-5323, 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.

This rule is intended to implement Iowa Code section 96.5(1)"g."

See also, McCarthy v. Iowa Emp't Sec. Comm'n, 76 N.W.2d. 201 (Iowa 1956) wherein the court held that persons who become unemployed by a layoff from their full-time employer cannot be disqualified for a previous voluntary quit from a part-time employer.

Workers who are disqualified from part-time employment based upon the reason for the separation may be eligible to receive reduced unemployment insurance benefits, provided they have sufficient wage credits from other base-period employers to remain monetarily eligible, and provided they are otherwise eligible. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016); codified on July 2, 2017, at Iowa Code § 96.5(12). In this event, the part-time employer's account will not be assessed for benefits paid to claimant and the employer's wage credits will not be considered in determining benefits for claimant until he or she has requalified by having worked in and been paid wages for insured work equal to ten times their weekly benefit amount.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). 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).

Inasmuch as the claimant voluntarily ended his employment while the employer still had work available and has not established that he ended the employment for a good cause reason attributable to the employer, the separation is disqualifying. The administrative record does not show that the claimant has requalified for benefits since the separation. However, he appears to be otherwise monetarily eligible according to base period wages. Thus, he may be eligible for benefits based upon those other wages. The claimant's maximum and weekly benefit amounts will be redetermined until requalification. This may result in an overpayment of benefits.

DECISION:

The March 19, 2019, reference 02, unemployment insurance decision is modified in favor of the appellant. The claimant voluntarily left the employment without good cause attributable to the employer and the administrative record does not show he has requalified for benefits, but he appears to be otherwise monetarily eligible. Benefits are allowed, provided he is otherwise eligible. The account of this part-time employer (208945) shall not be charged.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/rvs