

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN GREEN

Claimant

APPEAL NO. 08A-UI-06498-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VICORP RESTAURANTS

Employer

**OC: 06/08/08 R: 04
Claimant: Respondent (4/R)**

Iowa Code § 96.5-1 - Voluntary Quit
871 IAC 24.27 - Voluntary Quit of Part-Time Employment

STATEMENT OF THE CASE:

Vicorp Restaurants (employer) appealed an unemployment insurance decision dated July 11, 2008, reference 02, which held that Kevin Green (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 30, 2008. The claimant participated in the hearing. The employer participated through Josh Wallace, Assistant Manager and employer representative, Beth Crocker. Employer's Exhibit One was admitted into evidence. 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.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits?

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 a part-time cook from August 10, 2007 through January 2, 2008. He was getting paid \$8.00 per hour as a cook but he cut his finger at work and was placed on medical restrictions for approximately one week. He had to work as a cashier while on modified duty and a cashier only earns \$7.25 per hour. The claimant was on modified duty on December 21, 2007 and the paychecks are issued approximately two weeks after the date of work. The claimant saw his paycheck was not as much and he voluntarily quit because he was getting paid less per hour. He mistakenly believed he was getting paid less per hour because he was doing the work of a dishwasher but all employees are paid the same if they work in the back. The claimant's hourly wage only went down when he was on modified duty.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits.

Iowa Code § 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 24.27 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 claimant has the burden of proving that the voluntary quit was for a good reason that would not disqualify him. Iowa Code § 96.6-2. He quit because he was getting paid less money than the rate at which he was hired. The claimant's hourly wage was only temporarily reduced when he was not medically able to perform his regular job duties. This was not a change in the contract of hire and the claimant's separation 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. 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 his maximum weekly benefit amount.

DECISION:

The unemployment insurance decision dated July 11, 2008, reference 02, is modified in favor of the appellant. The claimant voluntarily quit his 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 his 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.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css