

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CATHY I HANSEN
Claimant

APPEAL NO. 16A-UI-06737-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOODWILL INDUSTRIES OF NE IA INC
Employer

OC: 05/15/16
Claimant: Appellant (4/R)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Administrative Code Section 871-24.27 – Voluntary Quit from Part-time Employment
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

Cathy Hansen filed a timely appeal from June 6, 2016, reference 01, that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on an agency conclusion that she had voluntarily quit on January 14, 2016 without good cause attributable to the employer. A telephone hearing was scheduled for July 5, 2016 at 9:00 a.m. The hearing was consolidated with the hearing in Appeal Number 16A-UI-06738-JTT. Ms. Hansen did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate in the hearing. The employer also did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate in the hearing. The administrative law judge took official notice of the agency's administrative record (APLT and Clear2There Hearing Control Screen) that document the claimant/appellant's failure to provide a telephone number for the hearing. Based on the claimant/appellant's failure to participate in the hearing, the administrative file, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

ISSUE:

Whether Ms. Hansen separated from the Goodwill employment for a reason that disqualifies her for unemployment insurance benefits or that relieves the employer's account of liability for benefits.

Whether the separation was from part-time employment.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal by notice mailed on June 21, 2016. The appellant, Cathy Hansen, failed to provide a telephone number at which she could be reached for the hearing. Ms. Hansen did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. There is no evidence the hearing notice was returned by the postal service as undeliverable for any reason. The

administrative law judge has conducted a careful review of the administrative file to determine whether the unemployment insurance decision should be affirmed.

Cathy Hansen was employed by Goodwill Industries of Northeast Iowa, Inc., as a part-time, temporary sales associate. Her supervisor was Richard Carter, Store Manager. Ms. Hansen started the employment on December 11, 2015 and last performed work for the employer on December 14, 2015. At that time, Ms. Hansen went off work due to injury sustained from a different employment and unrelated to the Goodwill employment. The injuries included cracked ribs and blood in her urine. Ms. Hansen and the employer agreed to treat the time off work as a leave of absence with a January 6, 2016 return to work date. Ms. Hansen did not return to work on January 6, 2016 or make further contact with Mr. Carter. When Ms. Hansen had not contacted Mr. Carter by January 11, 2016, Mr. Carter left a telephone message for Ms. Hansen in which he requested a return call. Mr. Carter indicated in his message that if he did not receive a return call, he would deem Ms. Hansen to have voluntarily quit. Ms. Carter did not return the call.

REASONING AND CONCLUSIONS OF LAW:

Iowa Admin. Code r. 871-26.8(3), (4) and (5) provide:

Withdrawals and postponements.

(3) If, due to emergency or other good cause, a party, having received due notice, is unable to attend a hearing or request postponement within the prescribed time, the presiding officer may, if no decision has been issued, reopen the record and, with notice to all parties, schedule another hearing. If a decision has been issued, the decision may be vacated upon the presiding officer's own motion or at the request of a party within 15 days after the mailing date of the decision and in the absence of an appeal to the employment appeal board of the department of inspections and appeals. If a decision is vacated, notice shall be given to all parties of a new hearing to be held and decided by another presiding officer. Once a decision has become final as provided by statute, the presiding officer has no jurisdiction to reopen the record or vacate the decision.

(4) A request to reopen a record or vacate a decision may be heard ex parte by the presiding officer. The granting or denial of such a request may be used as a grounds for appeal to the employment appeal board of the department of inspections and appeals upon the issuance of the presiding officer's final decision in the case.

(5) If good cause for postponement or reopening has not been shown, the presiding officer shall make a decision based upon whatever evidence is properly in the record.

The administrative law judge has carefully reviewed evidence in the record and concludes that the unemployment insurance decision previously entered in this case must be modified to reflect the part-time nature of the employment. Pursuant to the administrative rule referenced above, if a party disagrees with this decision, the party may make a written request to the administrative law judge that the hearing be reopened, but the request must be filed no later than 15 days after the mailing date of this decision. The written request should be mailed to the administrative law judge at the address listed at the beginning of this decision and must explain the emergency or other good cause that prevented the appellant from participating in the hearing at its scheduled time. An aggrieved party may also exercise the appeal rights referenced on the first page of this decision.

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.

Iowa Admin. Code r. 871-24.22(2)j(1)(2)(3) provides:

Benefit 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.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

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.

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.

The evidence in the administrative file consists of the unsworn statements and exhibits submitted at and for the June 3, 2016 fact-finding interview. That evidence establishes that Ms. Hansen voluntarily quit the part-time employment effective January 6, 2016, when she failed to return to work after an approved leave of absence. The quit was without good cause attributable to the employer. The employer's account will not be charged. The quit was from part-time employment. Ms. Hansen is disqualified for benefits based on the base period wages from the part-time Goodwill employment until she has worked in and been paid wages for

insured work equal to 10 times her weekly benefit amount. Because the quit was from part-time employment, Ms. Hansen remains eligible for benefits based on base period wage credits from employment other than the Goodwill employment, provided she meets all other eligibility requirements.

DECISION:

The June 6, 2016, reference 01, decision is modified to take into account the part-time nature of the employment and to correct the separation date. The claimant voluntarily quit the part-time employment on January 6, 2016 without good cause attributable to the employer. The employer's account will not be charged. The claimant is disqualified for benefits based on the base period wages from the part-time Goodwill employment until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. However, the claimant remains eligible for benefits based on base period wage credits from employment other than the Goodwill employment, provided she meets all other eligibility requirements.

This matter is remanded to the Benefits Bureau for redetermination of the claimant's eligibility for reduced benefits based on exclusion of the Goodwill wages.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs