

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESUS J CARDOZA
Claimant

APPEAL NO. 10A-UI-17920-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LUTHERAN SERVICES IN IOWA INC
Employer

**OC: 10/24/10
Claimant: Appellant (4-R)**

Iowa Code § 96.5(1) – Voluntary Leaving
871 IAC 24.27 – Voluntary Leaving Part-Time Employment

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 18, 2010 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on February 10, 2011. Claimant participated. Employer responded to the hearing notice instructions but was not available when the hearing was called, did not respond to the voice mail message, and did not participate through Michele Henriksen.

ISSUE:

The issue is whether claimant voluntarily left the employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked part-time as a program assistant and was separated from employment on April 30, 2010. He had been working for the employer in Muscatine and his supervisor said that he could affect an internal transfer to the facility in Ames. When he moved in May he called the employer and there were no openings available. He called again and went into the office in early June and began working with client notes and went over shift information and time sheets. He spoke to his wife about shifts and called Marlene back before the close of business the same day and left a message. She called back some days later and told him to call back later in the month. He applied for the online program assistant job posted effective June 24. He called Marlene and she said there were no jobs available but he did not ask why he had to reapply or talk to her about the online job. He did not contact the employer again even though his wife, who ran into a vice president for the employer and asked about his transfer.

The administrative record shows that the claimant has not requalified for benefits and had other base period wages but the record is unclear as to whether he is otherwise monetarily eligible.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left this part-time employment without good cause attributable to the employer, but has not requalified and the record is unclear as to whether claimant is otherwise monetarily eligible after deletion of these wage credits.

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 24.25(2) 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 § 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 § 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:

(2) The claimant moved to a different locality.

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.

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 relied on the employer to pursue him about the transfer or posted job, which was not its responsibility. Inasmuch as claimant did not pursue or follow up on the job transfer or online posting in Ames after his wedding in June, and left the Muscatine post to attend school, the separation is disqualifying. The claimant has not requalified for benefits since the separation but may be otherwise monetarily eligible according to base period wages.

DECISION:

The November 18, 2010 (reference 01) decision is modified in favor of the appellant. The claimant voluntarily left the part-time employment without good cause attributable to the employer and has not requalified for benefits but may be otherwise monetarily eligible. Benefits are allowed, provided the claimant is otherwise eligible. The account of this employer shall not be charged.

REMAND:

The monetary eligibility issue after the quit of this part-time employment (employer account number 069787) as delineated in the findings of fact is remanded to the claims section of Iowa Workforce Development for an initial investigation and determination.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs