

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARIO ALCARAZ
Claimant

SHORT STAFFED INC
Employer

APPEAL 20A-UI-00737-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/22/19
Claimant: Appellant (4R)**

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 January 26, 2020, the claimant filed an appeal from the January 22, 2020, (reference 03) unemployment insurance decision that denied benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on February 10, 2020. Claimant participated. Employer participated through vice president of operations Jessica Hinojosa. Claimant's Exhibit A was received.

ISSUES:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Employer is a temporary staffing firm.

Claimant works a regular, full-time job for Knife River.

In November 2019, claimant's hours with Knife River were reduced due to a lack of work. Claimant picked up a temporary assignment with employer to supplement his income. Claimant worked only one day for employer, on November 20, 2019. The next day claimant did not have child care and informed employer he would not return to the assignment. Claimant never returned to employer because his hours increased at his regular job at Knife River. Employer had work available.

The last week of December 2019, claimant was temporarily laid off from Knife River.

The wages claimant earned with this employer in November 2019 do not fall in his base period. Claimant has not requalified for unemployment insurance benefits since his November 20, 2019, separation from this employer.

Claimant also worked for this employer during the third quarter of 2018, and those wages do fall in his base period. That separation from employment has not been considered by the Benefits Bureau of Iowa Workforce Development.

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(1) provides:

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.

Iowa Code section 96.5(12) provides:

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

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.

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.

Iowa Code section 96.5(1)g provides:

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.

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.

Inasmuch as claimant resigned without good cause attributable to employer, the separation is disqualifying. The claimant has not requalified for benefits since the separation but is 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 do not need to be redetermined as the wages most recently earned with this employer do not fall into claimant's base period.

DECISION:

The January 22, 2020, (reference 03), unemployment insurance decision is modified in favor of the appellant. The claimant voluntarily left the employment without good cause attributable to the employer and has not requalified for benefits but is otherwise monetarily eligible. Benefits are allowed, provided he is otherwise eligible. The account of this part-time employer will not be charged as the wages earned in November 2019 were not in claimant's base period.

REMAND:

The issue of whether claimant has requalified for benefits since his separation from this employer in the third quarter of 2018 is remanded to the Benefits Bureau of Iowa Workforce Development for an initial determination.



Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

cal/rvs