

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL KAZMA
Claimant

MIDWEST CREAMERY INC
Employer

APPEAL 21A-UI-16098-SN-T
ADMINISTRATIVE LAW JUDGE
AMENDED DECISION

OC: 04/12/20
Claimant: Appellant (4)

Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 15, 2021, (reference 01) unemployment insurance decision that denied benefits based upon his voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on September 10, 2021. The claimant participated and testified. The employer participated through Owner Scott Otis. Official notice was taken of the agency records. No exhibits were received into the record.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?

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 shift leader from August 2018, he was separated from employment on May 8, 2020, when he quit. The claimant reported directly to the owner of the company, Scott Otis.

One of the claimant's duties as a shift leader was releasing the checks for the employer's payroll to subordinates. Over the his term of employment, the claimant received questions from subordinates regarding the issuance of checks and bounced checks. These incidents occurred because the employer did not have sufficient funds in its account. Each time this occurred, Mr. Otis issued checks offsetting the fees associated with previous checks bouncing.

The claimant was laid off by the employer on March 23, 2020. This was because of Governor Kim Reynolds' proclamation on March 17, 2020, shutting down various industries due to the Covid19 pandemic. The claimant performed duties at the store unrelated to serving the public from March 17, 2020 to March 23, 2020.

In February 2020, the claimant received an offer to work for Vero Chiropractic. The claimant declined this initial offer to accept the position.

On March 27, 2020, the employer was scheduled to make payment for the work performed by the claimant and other staff during the preceding pay period. The claimant was entitled to receive approximately \$1,000.00 for work performed during the preceding pay period, but he did not receive it on that date. The claimant and other staff were not paid because the employer did not have any money in its account to pay them due to the store being closed. Mr. Otis had applied for the Paycheck Protection Program, but had not been approved at that time.

On March 31, 2020, the claimant and his parents confronted Mr. Otis at his residence regarding the money he should have paid on March 27, 2020. Mr. Otis explained that he did not have any money in the employer's account. Mr. Otis asked the claimant to wait until the following week, with the expectation that he would receive PPP payments by that date. The claimant and his parents were not satisfied with that response. Ultimately, Mr. Otis paid the claimant the \$1,000.00 from his own personal funds that same day.

On April 10, 2020, the employer was scheduled to make payment for the work performed by the claimant and other staff during the preceding pay period. The claimant was paid this check on time because the employer had received his PPP loan payments and could make payroll at that time. This pay period would have covered in pertinent part the period the claimant worked from March 16, 2020 to March 23, 2020. The administrative record shows the employer paid the claimant \$381.00 in insured wages in the second quarter of 2020. The administrative records DBRO and KCCO show the claimant did not report receipt of these wages during the claims period from the week ending April 18, 2020 to the week ending July 11, 2020.

On April 12, 2020, the claimant filed his claim for unemployment insurance benefits. Around that same time, the claimant contacted Vero Chiropractic PLLC about the job offer they previously extended to him in February 2020 due to the issue he had with receiving the check in March 2020. Vero Chiropractic PLLC offered him a job starting in the second week of July 2020.

On May 7, 2020, Mr. Otis sent the claimant a message stating that the mall that the employer's shop is contained would reopen on May 8, 2020. Mr. Otis requested the claimant join a teleconference call regarding reopening the employer's shop.

On May 8, 2020, the claimant sent a text message to Mr. Otis stating that he appreciated the time he had working for the employer, but he stated new opportunities had arisen and he was going to take those opportunities.

In the second week of July 2020, the claimant started working for Vero Chiropractic PLLC. The administrative record Wage-A shows the claimant began receiving insured wages from this employer in the third quarter of 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment to accept employment elsewhere.

Iowa Code section 96.5(1)a provides:

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

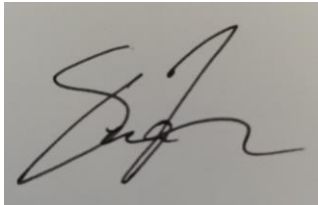
1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Even though the separation was without good cause attributable to the employer and would, standing alone, disqualify the claimant from receiving benefits, the claimant did leave in order to accept other employment and did perform services for the subsequent employer. Accordingly, benefits are allowed and the account of the employer shall not be charged.

DECISION:

The July 15, 2021, (reference 01), decision is modified in favor of the appellant. The claimant voluntarily left employment in order to accept other employment. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer (account number #331136) shall not be charged.



Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

September 24, 2021
Decision Dated and Mailed

smn/mh