

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MERRIL D WILSKE
Claimant

APPEAL NO. 08A-UI-01428-LT

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

**DEPT OF VETERANS AFFAIRS
CNTRL IA HLTCR SYS 05A**
Employer

**OC: 12/30/07 R: 04
Claimant: Appellant (2)**

Iowa Code section 96.5(1)a – Voluntary Leaving – Other Employment
20 CFR 609.14 – Federal Employer – No Relief from Charges

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 31, 2008, reference 02, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on February 26, 2008. Claimant participated. Employer participated through Dawn McCalley.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer and if the federal employer may be relieved of charges.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time MRI technician from October 29, 2006 until September 14, 2007 when he quit due to the commute's impact on his injury at work. At the time he left he had arranged for another job and that employer agreed to let him take a few weeks off to work on his house before beginning work there. Claimant did not claim any benefits during that time period. He then worked for EIP in Earlsville, Iowa until he was laid off the first week of January 2008.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5-1-a 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:

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.

871 IAC 24.28(5) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment.

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.

20 CFR 609.14 provides:

(a) State entitlement. Each State is entitled to be paid by the United States with respect to each individual whose base period wages included Federal wages, an amount bearing the same ratio to the total amount of compensation paid to such individual as the amount of the individual's Federal wages in the individual's base period bears to the total amount of the individual's base period wages.

(b) Payment. Each State shall be paid, either in advance or by way of reimbursement, as may be determined by the Department, the sum that the Department estimates the State is entitled to receive under the Act and this part for each calendar month. The sum shall be reduced or increased by the amount which the Department finds that its estimate for an earlier calendar month was greater or less than the sum which should have been paid to the State. An estimate may be made on the basis of a statistical, sampling, or other method agreed on by the Department and the State agency.

(c) Certification by the Department. The Department, from time to time, shall certify to the Secretary of the Treasury the sum payable to each State under this section. The Secretary of the Treasury, before audit or settlement by the General Accounting Office, shall pay the State in accordance with the certification from the funds for carrying out the purposes of the Act and this part.

(d) Use of money. Money paid a State under the Act and this part may be used solely for the purposes for which it is paid. Money so paid which is not used solely for these purposes shall be returned, at the time specified by the Agreement, to the Treasury of the United States and credited to the current applicable appropriation, fund, or account from which payments to states under the Act and this part may be made.

Therefore, the federal employer may not be relieved of benefit charges.

DECISION:

The January 31, 2008, reference 02, decision is reversed. The claimant voluntarily left his employment in order to accept other employment. Benefits are allowed, provided the claimant is otherwise eligible.

NOTE TO CLAIMANT: You still need to provide the local office with evidence of having worked at EIP after the separation from this employer to ensure proper reporting of wages for the fourth quarter of 2007. The credit union records are not sufficient.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs