

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

SYLMA WINGARD
Claimant

ON CALL CLINICIANS INC
Employer

APPEAL 22R-UI-17919-JD-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/30/20
Claimant: Appellant (4)

Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from the April 29, 2022 (reference 02) unemployment insurance decision that denied benefits based on a determination that the voluntarily quit her employment on April 15, 2021, without good cause attributable to her employer. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for June 22, 2022, at 11:00 a.m. A review of the Appeals Bureau's conference call system indicates that the appellant failed to call the toll-free number listed on the hearing notice at the time of the hearing. No hearing was held. A default decision was entered on August 30, 2022.

On September 9, 2022, the claimant appealed the default decision to the Employment Appeal Board (EAB). On October 4, 2022, the EAB remanded the appeal for rehearing. The parties were properly notified about the hearing. A telephone hearing was held on November 3, 2022. Claimant, Sylma Wingard, participated and testified. Employer did not participate. Official notice was taken of the administrative record.

ISSUES:

Whether the claimant quit the employment without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Claimant began working for employer in March 2021. Claimant last worked as a part-time on-call resume reviewer. Claimant was separated from employment on April 15, 2021, when the employer stopped providing her hours and the claimant voluntarily quit her part-time on-call position. No certain number of hours were guaranteed to the claimant and she separated from employment after approximately a month due to lack of available work. Claimant has other regular employment in the base period with Clarke University of Dubuque.

On Call Clinicians is not a base period employer for this claim year.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant's separation from this employer is moot and not disqualifying.

Iowa Code section 96.5(12) provides:

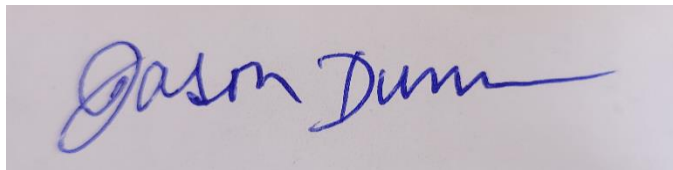
An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Because claimant was hired to work only on-call or as-needed, she is not considered unemployed within the meaning of the law as it pertains to this employer. When an individual is hired to work on-call, the implied agreement is that they will only work when work is available and that work will not be regularly available. Thus any reduction in hours is directly related to the on-call status as no regular hours are guaranteed. However, since there are other wages in the base period the separation from this on-call employer is moot. Accordingly, benefits may be allowed if the claimant is otherwise monetarily eligible and the account of On Call Clinicians, Inc., (617643-000) shall not be charged.

DECISION:

The April 29, 2022, (reference 02) unemployment insurance decision is modified in favor of the appellant. The claimant's separation from her on-call part-time employer does not affect her ability to receive unemployment compensation and benefits are allowed if claimant is otherwise monetarily eligible and the account of On Call Clinicians, Inc., (account number 617643-000) shall not be charged.



Jason Dunn
Administrative Law Judge II

November 14, 2022
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> OR by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.