

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMINULLAH SAHEB ZAI
Claimant

WEST LIBERTY FOODS LLC
Employer

APPEAL 24A-UI-02254-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/04/24
Claimant: Appellant (2R)**

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

Mr. Saheb Zai, the claimant/appellant,¹ appealed the Iowa Workforce Development (IWD) February 23, 2024 (reference 01) unemployment insurance (UI) decision. IWD denied Mr. Saheb Zai REGULAR (state) UI benefits because IWD concluded he voluntarily quit working for this employer on February 2, 2024 to work for another employer and this employer did not cause his quitting, but the other employer did not hire him. On March 5, 2024, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to Mr. Saheb Zai and the employer for a telephone hearing scheduled for March 22, 2024.

The undersigned administrative law judge held a telephone hearing on March 22, 2024. Mr. Saheb Zai participated in the hearing personally through two Pashto interpreters from CTS Language Link – the administrative law judge contacted CTS Language Link twice due to telephone connection issues. The employer did not participate in the hearing. The administrative law judge admitted Claimant's Exhibit A as evidence.

ISSUES:

Did Mr. Saheb Zai voluntarily quit without good cause attributable to the employer?
Is Mr. Saheb Zai able to and available for work?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Saheb Zai began working for the employer on May 31, 2023. He worked as a full-time meat cutter. His employment ended on February 4, 2024, when he quit. Mr. Saheb Zai quit because the job was about 2 hours away from his home and he found a new job at employer Whirlpool, which was closer to his home.

¹ Claimant is the person who applied for UI benefits. Appellant is the person or employer who appealed.

Mr. Saheb Zai began working at Whirlpool on February 5. On February 7, Whirlpool told Mr. Saheb Zai that he did not meet their performance expectations and they let him go. IWD has not issued a decision about Mr. Saheb Zai's eligibility for UI benefits based on how his job ended with Whirlpool.

Mr. Saheb Zai is seeking work, and nothing is stopping him from accepting work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Saheb Zai's separation from employment with this employer on February 4, 2024 was with good cause attributable to the employer, and he is able to and available for work as February 23, 2024, the effective date of his UI claim, so he is eligible for UI benefits.

Mr. Saheb Zai Quit to Accept a Better Job

Iowa Code section 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. 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.

Iowa Admin. Code r. 871-23.43(5) provides:

(5) Sole purpose. 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. No charge shall accrue to the account of the former voluntarily quit employer.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer.² A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention.³ "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular.⁴

In this case, Mr. Saheb Zai voluntarily quit employment with this employer for the sole purpose of accepting better employment with employer Whirlpool. Mr. Saheb Zai's quit does not

² Iowa Code § 96.6(2).

³ *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

⁴ *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

disqualify him from REGULAR (state) UI benefits because he quit for the sole purpose of accepting an offer of better employment.

Mr. Saheb Zai is Able to and Available for Work as of February 23, 2024

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

To be able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood."⁵ "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides."⁶ A person claiming benefits has the burden of proof that she is able to work, available for work, and earnestly and actively seeking work.⁷

In this case, Mr. Saheb is looking for work and he is ready to go to work. Mr. Saheb Zai is able to and available for work.

Since Mr. Saheb Zai quit for the sole purpose of accepting an offer of better employment, and he is able to and available for work, Mr. Saheb Zai is eligible for UI benefits, as long as no other decision denies him UI benefits.

This employer's account should not be charged.

⁵ *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1).

⁶ *Sierra* at 723.

⁷ Iowa Admin. Code r. 871-24.22.

DECISION:

The February 23, 2024 (reference 01) UI decision is REVERSED. Mr. Saheb Zai's separation from employment with this employer on February 4, 2024 does not disqualify him from REGULAR (state) UI benefits because he voluntarily quit for the sole purpose of accepting better employment. Mr. Saheb Zai is eligible for UI benefits, as long as no other decision denies him UI benefits.

IWD must not charge this employer's account for any UI benefits IWD pays to Mr. Saheb Zai.

REMAND:

The issue of Mr. Saheb Zai's eligibility for UI benefits based on how his job ended with Whirlpool is REMANDED (sent back) to the IWD Benefits Bureau for investigation, a decision, if necessary, and other necessary action.



Daniel Zeno
Administrative Law Judge

March 26, 2024
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
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
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
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
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.