

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MEGAN VANDEWEERD
Claimant

APPEAL NO. 13A-UI-13605-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

US BANK NATIONAL ASSOCIATION
Employer

OC: 11/10/13
Claimant: Respondent (4-R)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.27 – Voluntary Quitting – Part-time Employment
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from the December 3, 2013, (reference 01) unemployment insurance decision that allowed benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on January 7, 2014. Claimant participated. Employer participated through regional manager Anne Schneider and mortgage loan officer Jeff Holladay. Employer's Exhibit 1 was received. The administrative law judge took official notice of the administrative record.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Is the claimant otherwise monetarily eligible for benefits?

Is the employer liable for benefit charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a mortgage loan assistant from February 1, 2013, and was separated from employment on March 26, 2013. She quit with two weeks' notice on March 25, 2013, stating that she wanted to spend full-time working with her real estate clients. Continued work was available. She was discharged prior to the intended separation date of April 8, 2013, but was paid for the two weeks.

The issue of claimant's availability for work has not been addressed at the Claims fact-finding interview level.

The administrative record shows that the claimant has not requalified for benefits since this separation but reflects she may be otherwise monetarily eligible for benefits after this employer's wages are excluded from the base period.

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, but has not requalified and may be otherwise monetarily eligible.

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.

871 IAC 24.25(19) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(19) The claimant left to enter self-employment.

Iowa Code section 96.5-1-g 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:

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.

871 IAC 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 the Form 65-5323 or 60-0186, 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.

Inasmuch as claimant quit to work full-time in self-employment (real estate), the separation is disqualifying. However, the claimant has not requalified for benefits since the separation and may be otherwise monetarily eligible according to base period wages. Although the employer discharged her in advance of the resignation effective date, she was paid severance for that period and there was not a claim filed during that notice period so the issue is moot. Benefits are allowed, provided she is otherwise eligible. The account of the employer shall not be charged.

DECISION:

The December 3, 2013, (reference 01), 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 may be otherwise monetarily eligible. Benefits are allowed, provided she is otherwise eligible. The account of this employer (292349) shall not be charged.

REMAND:

The availability for work issue delineated in the findings of fact is remanded to the claims section of Iowa Workforce Development for an initial investigation and determination.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs