

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

REBBECA L NICCUM
Claimant

APPEAL NO: 19A-UI-04339-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WINNEBAGO INDUSTRIES
Employer

**OC: 07/08/18
Claimant: Appellant (4)**

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.5(1)a – Voluntary Quitting – Other Employment
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant, Rebecca L. Niccum, filed an appeal from the May 23, 2019, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 21, 2019. The claimant participated personally. Susan Gardner represented the employer. Claimant Exhibit A and Employer Exhibit 1 were admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant totally, partially or temporarily unemployed?
Did the claimant quit for other employment?
Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a production worker and was separated from employment on May 3, 2019, when she quit the employment to accept other employment. Continuing work was available.

The claimant tendered her resignation effective April 18, 2019, with a two-week notice. She intended to work until May 3, 2019 before accepting the new employment, which was closer to her home. The claimant was unable to work her entire resignation because the employer had a week long factory shut down from April 28-May 4, 2019. No work was available to the claimant. She is currently working full-time for her new employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was temporarily unemployed from April 28, 2019-May 4, 2019. Effective May 5, 2019, the claimant quit her employment with Winnebago Industries to accept other full-time employment.

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 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, 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".

Iowa Code section 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Iowa Admin. Code r. 871-24.1 provides:

Definitions. Unless the context otherwise requires, the terms used in these rules shall have the following meaning. All terms which are defined in Iowa Code chapter 96 shall be construed as they are defined in Iowa Code chapter 96.

24.1(113) *Separations*. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. *Layoffs*. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

For the period of April 28, 2019-May 4, 2019: The claimant filed a weekly continued claim for the week of April 28-May 4, 2019 because of a factory shutdown. No work was available to the claimant, and she was unable to complete her resignation period due to a lack of work. Accordingly, the administrative law judge concludes the claimant was “totally unemployed” for the week ending May 4, 2019. Benefits are allowed for this week, provided the claimant meets all other eligibility requirements. The employer’s account may be chargeable.

Effective May 5, 2019: The claimant did not return to employment May 5, 2019 after the factory shut down ended because she accepted other employment.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Admin. Code r. 871-24.28 provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

24.28(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. The employment does not have to be covered employment and does not include self-employment.

Iowa Admin. Code r. 871-23.43 provides:

Charging of benefits to employer accounts.

23.43(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.

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 has performed services for the subsequent employer. Accordingly, the claimant’s separation from this employer should not disqualify her from benefits and any future benefits allowed after May 4, 2019, will not be chargeable to this employer, Winnebago Industries.

At this time, the issue is moot as the claimant is not filing weekly continued claims because she is working full-time.

DECISION:

The May 23, 2019, (reference 02) decision is modified in favor of the claimant/appellant. The claimant was temporarily laid off of work April 28-May 4, 2019. Benefits are allowed for this week, provided she is otherwise eligible.

Effective May 5, 2019, the claimant voluntarily quit the employment to accept other employment. Her separation is not disqualifying and this employer, Winnebago Industries, should be relieved of charges for future benefits she may receive.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/rvs