

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**NICHOLE L WICKHAM**  
Claimant

**APPEAL 20A-UI-08425-BH-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MENARD INC**  
Employer

**OC: 03/29/20**  
**Claimant: Appellant (1)R**

Iowa Code section 96.5(1) – Voluntary Quit

Iowa Administrative Code rule 871-24.25 – Voluntary Quit Without Good Cause Attributable to the Employer

Iowa Administrative Code rule 871-24.26 – Voluntary Quit With Good Cause Attributable to the Employer

Iowa Code section 96.5(12) – Concurrent Part-Time Employment

**STATEMENT OF THE CASE:**

The claimant, Nichole L. Wickham, appealed the July 14, 2020 (reference 01) unemployment insurance decision that denied benefits based upon a finding Wickham voluntarily quit her job with Menard, Inc. (Menard) without good cause attributable to the employer. The agency properly notified the parties of the appeal and hearing.

The undersigned presided over a telephone hearing on August 28, 2020. Wickham participated personally and testified. Menard participated through manager Brett Breberg, who testified.

**ISSUES:**

Was Wickham's separation from employment with Menard a layoff, discharge for misconduct, or voluntary quit without good cause attributable to the employer?

Does Iowa Code section 96.5(12) apply to Wickham's separation from employment with Menard?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the undersigned finds the following facts.

Menard hired Wickham on April 25, 2018. Wickham worked part time as a cashier. She had a full time job with Physician's Clinic of Iowa. Wickham last worked for Menard on March 11, 2020.

Wickham has been diagnosed with multiple sclerosis. She takes a medication for it that affects her immune system. The impact on Wickham's immune system places her at high risk of serious illness or death from COVID-19.

After COVID-19 began spreading across the state and nation, Wickham notified Menard of her health condition and high-risk status making it too dangerous for her to work as a cashier. The nature of work entails interacting with many members of the public, which increased the chances she might contract the virus. Menard offered her a leave of absence due to the COVID-19 threat. Menard and Wickham agreed on a leave of absence from March 27, 2020, through May 2, 2020.

Wickham continued to work her full-time job at the clinic. At the clinic, she has an office and did not interact with the public anywhere near as much as at her Menard job. The clinic reduced Wickham's hours to 20 per week, which prompted her to file a claim for unemployment insurance benefits on March 29, 2020.

Iowa's COVID-19 outbreak was ongoing as the end of Wickham's leave of absence from Menard approached. Wickham credibly testified she called Menard before May 2, 2020, and spoke to an individual whose name she does not recall. Wickham informed the individual with whom she spoke that she would not be able to return to work because her health condition and medication made the nature of the work too dangerous for her and resigned.

Wickham's resignation was not communicated to management at the store where she worked. Management put her on the schedule to work. When she was absent three days without notification, Menard considered her to have quit even though she submitted her resignation before May 2, 2020.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the undersigned concludes Wickham voluntarily left employment with Menard without good cause attributable to the employer.

Iowa Code section 96.5(1) disqualifies a claimant from benefits if the claimant quit her job without good cause attributable to the employer. The Iowa Supreme Court has held that good cause requires "real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith." *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986). Moreover, the court has advised that "common sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination." *Id.*

According to the Iowa Supreme Court, good cause attributable to the employer does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Emp't Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988). Good cause may be attributable to "the employment itself" rather than the employer personally and still satisfy the requirements of the Act. *E.g. Raffety v. Iowa Emp't Sec. Comm'n*, 76 N.W.2d 787, 788 (Iowa 1956).

A burden-shifting framework is used to evaluate quit cases. Because an employer may not know why a claimant quit, the claimant has the initial burden to produce evidence suggesting the claimant is not disqualified from benefits under Iowa Code section 96.5(1) a through j and section 96.10. If the claimant produces such evidence, the employer has the burden to prove the claimant is disqualified from benefits under section 96.5(1).

COVID-19 was spreading across the state and nation at the time in question. The pandemic created a risk across society. The danger posed by COVID-19 was not specific to the Menard store at which Wickham worked.

Further, Wickham resigned because of a heightened risk personal to her. She has multiple sclerosis and takes medication because of her condition. This medication makes her immune system less effective than the average person who does not take it. As a result, Wickham is at a higher risk of serious illness or death from COVID-19.

While Wickham had a very good reason generally for resigning from her part-time job with Menard, that reason was personal to her and not a good-cause reason attributable to Menard. Her separation from employment is therefore disqualifying under Iowa Code section 96.5(1). But that does not necessarily mean that Wickham is not eligible to receive benefits due to the reduction of hours imposed on her by her full-time employer.

In *Irving v. Employment Appeal Board*, the Iowa Supreme Court considered whether spill-over taint exists under the Iowa Employment Security Law, Iowa Code chapter 96. 883 N.W.2d 179, 184 (Iowa 2016) (citing *Glende v. Comm'r of Econ. Sec.*, 345 N.W.2d 283 285 (Minn. Ct. App. 1984)). Spill-over taint potentially applies in unemployment cases when the claimant has two or more jobs. See *id.* It stands for the proposition that when a claimant has more than one job, a disqualification relating to one of those jobs also applies with respect to eligibility for unemployment benefits from the loss of any other job. See *id.*

In *Irving*, the claimant had a full-time job and a part-time job. The claimant appealed to the Iowa Supreme Court the decision finding her ineligible for benefits due to the nature of her separation from her full-time job. Subsequently, IWD found her ineligible from benefits due to the nature of her separation from her part-time job. Before the Iowa Supreme Court, the Employment Appeal Board argued in favor of spill-over taint, contending the determination that the claimant was ineligible for benefits because of the nature of her separation from her part-time job made her ineligible for all unemployment benefits, regardless of the nature of her separation from her full-time job. *Id.* In response, the claimant argued

her disqualification based on alleged misconduct from her part-time job should have no bearing on whether she should be disqualified from receiving unemployment benefits as to her full-time job. In the alternative, Irving argues that even if the EAB is correct that this action is moot on a spill-over theory, this court should nonetheless address the important substantive issues presented in this appeal.

*Id.*

The court rejected the Board's argument. See *id.* at 193–95. It found the Board's argument ignored the legislative intent behind chapter 96 as well as the plain text of the statute. See *id.* Further, the court reasoned, imposing spill-over taint was not in line with persuasive Iowa Supreme Court construing chapter 96. See *id.*

While *Irving* focused on disqualification due to a discharge for misconduct under section 96.5(2), the opinion is equally applicable when the disqualifying separation from part-time employment is a quit under section 96.5(1). There is no basis in the administrative rules, Iowa Code chapter 96, or the *Irving* opinion to support disqualifying a claimant from benefits due to spill-over taint from a disqualifying quit of a part-time job. See *id.*; see also Iowa Code ch. 96 and Iowa Admin. Code r. 871-24. In fact, the court even drew on its caselaw on quits under section 96.5(1) to support its holding with respect to discharges for misconduct under section 96.5(2):

We further think the reasoning of *McCarthy* and *Welch* is instructive. Section 96.5(1) dealing with voluntary quits and section 96.5(2) dealing with misconduct use slightly different language to refer to the individual's job—"left work voluntarily" versus "discharged for misconduct in connection with the individual's employment." Iowa Code § 96.5(1), (2). Yet in *McCarthy*, we refused to judicially add the term "all" before the term "work." 76 N.W.2d at 203–04. We decline to add the term "all" here as well, particularly when the legislature in fact used a more inclusive term "all employers" in the subsection immediately following the statutory provision in question here. This plain vanilla, button-down approach to statutory interpretation is also consistent with our nexus approach in *Moorman Manufacturing*, where we required that each individual case of unemployment compensation be considered and construed on the facts as presented. 230 Iowa at 130–31, 296 N.W. at 795.

*Irving*, 883 N.W.2d at 194–95.

The General Assembly responded to the court's *Irving* holding by passing legislation in the subsequent session. See 2017 Iowa Acts ch. 70 § 3.<sup>1</sup> The legislature overturned the court's ruling with respect to when a claimant is entitled to benefits if the claimant becomes incarcerated by codifying a list of criteria for making such a determination. See *id.* at § 3 (now codified at Iowa Code § 96.5(11)); compare with *Irving*, 883 N.W.2d at 203–10. However, the legislature did not amend chapter 96 to add language creating spill-over taint. See *id.* at ch. 70. Instead, the legislature added the following provision to section 96.5:

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.

*Id.* at § 3 (now codified at Iowa Code § 96.5(12)).

If spill-over taint from concurrent part-time employment disqualified an individual from all benefits, including those from concurrent full-time employment, there would be no need for what is now codified at section 96.5(12). Section 96.5(12) mandates that the concurrent part-time employer's account not be charged for any benefits paid to the claimant following a disqualifying separation from that employment, which means such an employer will not incur tax liability even though the claimant can still receive benefits stemming from the full-time employment. By enacting this provision, the legislature plainly embraced the court's interpretation of chapter 96 (that there is no spill-over taint caused by a disqualifying separation from part-time work) and created a more equitable outcome for the concurrent part-time employer (no increase in tax liability from the separation). To find otherwise would be to interpret chapter 96 as if section 96.5(12) does not exist, a reading that would violate longstanding principles of statutory construction because it would render section 96.5(12) superfluous. See, e.g., *Matter of Bo Li*, 911 N.W.2d 423, 428 (Iowa 2018) (quoting *State v. Nall*, 894 N.W.2d 514, 518 (Iowa 2017)).

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<sup>1</sup> Online at: [www.legis.iowa.gov/docs/publications/iactc/87.1/CH0070.pdf](http://www.legis.iowa.gov/docs/publications/iactc/87.1/CH0070.pdf) (last viewed Sep. 4, 2020).

For these reasons, there is no spill-over taint from a disqualifying quit of a concurrent part-time job to the benefits to which a claimant might be eligible relating to her full-time job under *Irving* and chapter 96. Applying the *Irving* decision and section 96.5(12) to the current case:

- 1) Menard shall not be charged for any benefits Wickham might be eligible due to the reduction in work hours mandated by her concurrent full-time employer.
- 2) Wickham's claim for benefits is remanded to the Benefits Bureau for a determination of whether she is entitled to benefits due to the reduction of work hours mandated by her concurrent full-time employer.

This decision does not address whether Wickham might be eligible for Pandemic Unemployment Assistance (PUA) under the federal CARES Act.

## **DECISION:**

### **Regular Unemployment Insurance Benefits Under State Law**

The July 14, 2020 (reference 01) unemployment insurance decision is affirmed in part and remanded. Wickham voluntarily left employment without good cause attributable to Menard, which means that Menard shall not be charged for any benefits for which Wickham might be eligible because of circumstances at her concurrent full-time employer under Iowa Code section 96.5(12). Wickham's claim is remanded to the Benefits Bureau for a determination of whether she is entitled to benefits due to the circumstances at her concurrent full-time employer that led her to file a claim for benefits.

### **Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act**

Even though Wickham might not be eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if Wickham is eligible for such compensation for the week claimed.

This decision does not address whether Wickham is eligible for PUA. For a decision on such eligibility, Wickham must apply for PUA.

For information about PUA, go to: [www.iowaworkforcedevelopment.gov/pua-information](http://www.iowaworkforcedevelopment.gov/pua-information)  
To apply for PUA, go to: [www.iowaworkforcedevelopment.gov/pua-application](http://www.iowaworkforcedevelopment.gov/pua-application)



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Ben Humphrey  
Administrative Law Judge

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September 9, 2020  
Decision Dated and Mailed

bh/sam