

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAREN A BROUGHTON
Claimant

APPEAL NO. 14A-UI-03846-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CIGARETTE OUTLET INC
Employer

**OC: 02/23/14
Claimant: Appellant (4)**

Iowa Code Section 96.5(1)(a) – Voluntary Quit to Accept Other Employment
871 IAC 24.26(12) – Employer Termination of Employment During Quit Notice Period

STATEMENT OF THE CASE:

Karen Broughton filed a timely appeal from the March 31, 2014, reference 03, decision that disqualified her for benefits. After due notice was issued, a hearing was held on April 30, 2014. Ms. Broughton participated. Debra Schnyder represented the employer. Exhibit A, a paystub issued to the claimant by employer SSW Holding Company, Inc., was received into evidence.

ISSUE:

Whether Ms. Broughton voluntarily quit the employment for the sole purpose of accepting other employment and performed work for the new employer.

Whether employer Cigarette Outlet, Inc., may be charged for benefits paid to the claimant.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Karen Broughton was employed by Cigarette Outlet, Inc., as a part-time clerk from 2008 and last performed work for the employer on February 21, 2014. On February 14, 2014, Ms. Broughton gave notice to the employer that she had located new employment and intended for March 2, 2014 to be her last day of employment with Cigarette Outlet. Ms. Broughton was supposed to start her new job on March 3, 2014. The employer elected to end the employment on February 21, 2014, rather than have Ms. Broughton continued to work through her notice period. The employer had decided to give Ms. Broughton's remaining work hours to other employees. On March 3, 2014, Ms. Broughton began employment with SSW Holding Company, Inc.

Ms. Broughton established a claim for benefits that was effective February 23, 2014.

REASONING AND CONCLUSIONS OF LAW:

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson

Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Iowa Code section 96.5(1)(a) provides as follows:

Causes for disqualification.

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.

[Emphasis added.]

The administrative law judge must follow the plain language of the statute. Ms. Broughton voluntarily quit the employment, effective March 2, 2014, for the sole purpose of accepting other employment and performed work for the new employer. Accordingly, Ms. Broughton's separation from Cigarette Outlet, Inc., would not disqualify her for benefits. Ms. Broughton is eligible for benefits provided she meets all other eligibility requirements. The quit that was to be effective March 2, 2014 was without good cause attributable to the employer. Accordingly, the employer would not be liable for benefits paid to Ms. Broughton for the period on or after March 2, 2014.

Iowa Administrative Code rule 871 – 24.26(12) provides as follows:

When an employee gives notice of intent to resign at a future date, it is a quit issue on that future date. Should the employer terminate the employee immediately, such employee shall be eligible for benefits for the period between the actual separation and the future quit date given by the claimant.

Because the employer elected to terminate the employment before the effective quit date provided by Ms. Broughton, the employer's account may be charged for benefits for the benefit week ending March 1, 2014. However, the employer's liability for benefits is limited to that one week.

DECISION:

The claims deputy's March 31, 2014, reference 03, decision is modified as follows. The claimant voluntarily quit the employment, effective March 2, 2014, for the sole purpose of accepting other employment and performed work for the new employer. The claimant is eligible for benefits, provided she meets all other eligibility requirements. The quit that was to be

effective March 2, 2014 was without good cause attributable to the employer. The employer's account is relieved of charges for benefits paid to the claimant for the period on or after March 2, 2014. Because the employer elected to end the employment early, the employer's account may be charged for benefits for the benefit week ending March 1, 2014. The employer's liability for benefits is limited to that one week.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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