

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KAMA S AUSBORN**

Claimant

**APPEAL NO. 14A-UI-09001-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JORDANS NURSERY INC**

Employer

**OC: 08/03/14**

**Claimant: Respondent (4)**

Iowa Code Section 96.4(3) – Able & Available

Iowa Code Section 96.4(3) – Still Employed Same Hours and Wages

Iowa Code Section 96.7(2) – Employer Liability

Iowa Code Section 96.5(1) – Voluntary Quit

871 IAC 24.27 – Voluntary Quit of Part-time Employment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 26, 2014, reference 01, decision that allowed benefits to the claimant effective August 3, 2014, provided she was otherwise eligible, based on an agency conclusion that she was able and available for work, but had been on a short-term layoff. After due notice was issued, a hearing was held on September 18, 2014. Claimant Kama Ausborn participated. Accountant Kevin Kamienski represented the employer and presented additional testimony through William Jordan. The administrative law judge took official notice of the agency's administrative record of wages reported by and for the claimant, benefits disbursed to the claimant, and the decision allowing department approved training for the period of August 9, 2014 through December 20, 2014. The employer waived any and all defects in the hearing notice that was mailed to the employer on September 8, 2014. The parties waived formal notice of the able and available issues that had been erroneously omitted from the hearing notice.

**ISSUES:**

Whether the claimant has been able to work and available for work since establishing the claim for benefits that was effective August 3, 2014.

Whether the claimant has been partially unemployed or temporarily laid off since August 3, 2014.

Whether the claimant is exempt from being available for work and exempt from the work search requirement based on approval for department approved training.

Whether the claimant separated from the employment for a reason that disqualifies her for benefits.

Whether the claimant has been overpaid benefits

Whether the claimant must repay benefits.

Whether the employer's account may be assessed for benefits paid to the claimant.

### **FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Kama Ausborn established a claim for benefits that was effective August 3, 2014 and has received benefits. For the week ending August 9, 2014, Ms. Ausborn reported \$145.00 in wages and received \$170.00 in benefits. For the week ending August 16, 2014, Ms. Ausborn reported \$145.00 in wages and received \$170.00 in benefits. For the week ending August 23, 2014, Ms. Ausborn reported \$138.00 in wages and received \$177.00 in benefits. For the weeks ending August 30, September 06, and September 13, 2014, Ms. Ausborn reported zero wages and received \$252.00 in benefits for each week.

On August 19, 2014, Iowa Workforce Development entered a decision that approved Ms. Ausborn for department approved training for the period of August 9, 2014 through December 20, 2014. August 9, 2014 was the Saturday that ended the week that had started August 3, 2014. Ms. Ausborn is a student at Hawkeye Community College. Ms. Ausborn was a full-time student during the summer term that had started on June 6, 2014 and that had ended on July 28, 2014. Ms. Ausborn started a full-time nursing program on August 25, 2014. Ms. Ausborn's fall class schedule consists of 1:00 p.m. to 9:30 p.m. on Mondays and 8:00 a.m. to 3:00 p.m. on Tuesdays, Wednesdays, and Thursdays. Ms. Ausborn does not have school on Friday, Saturday or Sunday.

Ms. Ausborn began performing work for Jordans' Nursery in April 2014 and last performed work for the employer on August 22, 2014. Ms. Ausborn was employed as a part-time, seasonal, greenhouse laborer. The employer hired Ms. Ausborn to work 20 hours or less. The employer advised Ms. Ausborn that the employer would schedule Ms. Ausborn around Ms. Ausborn's class schedule. Ms. Ausborn's wage was \$7.25 per hour. Ms. Ausborn's immediate supervisor was William "Bill" Jordan, Vice President. Kim Jordan is Mr. Jordan's spouse and functions as secretary, bookkeeper, and sales representative. Ms. Jordan hired Ms. Ausborn.

On or about August 22, 2014, Ms. Ausborn told the employer that, going forward, she would only be available to work on Fridays. Though the employer had hired Ms. Ausborn for seasonal work, the employer deemed Ms. Ausborn's change in work availability unacceptable and told Ms. Ausborn that the employer needed someone to work more than just Fridays. Based on that statement, and her school obligations that prevented her from working the hours the employer wanted her to work on Mondays through Thursdays, Ms. Ausborn did not return to the employment. At the time Ms. Ausborn ceased appearing for work, the employer continued to have the same work available for her.

Ms. Ausborn's base period for purposes of the claim that was effective August 3, 2014, consists of the second, third and fourth quarter of 2013 and the first quarter of 2014. Jordans' Nursery is not a base period employer in connection with the August 3, 2014 claim.

## REASONING AND CONCLUSIONS OF LAW:

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

An individual shall be deemed *partially unemployed* in any week in which, 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. Iowa Code section 96.19(38)(b). 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 Code section 96.19(38)(c).

Jordans' Nursery has neither laid Ms. Ausborn off nor reduced Ms. Ausborn's work hours. Accordingly, Ms. Ausborn has not been partially unemployed or temporarily laid off at any point since she filed her claim for benefits.

Iowa Code section 96.4(6)(a) – addresses department approved training as follows:

### 96.4 Required findings.

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

6. a. An otherwise eligible individual shall not be denied benefits for any week because the individual is in training with the approval of the director, nor shall the individual be denied benefits with respect to any week in which the individual is in training with the approval of the director by reason of the application of the provision in subsection 3 of this section relating to availability for work, and an active search for work or the provision of section 96.5, subsection 3, relating to failure to apply for or a refusal to accept suitable work. However, an employer's account shall not be charged with benefits so paid.

Iowa Administrative Code rule 871-24.43(7) further addresses department approved training as follows:

23.43(7) Department–approved training. A claimant who qualifies and is approved for department–approved training (see rule 871- 24.39) shall continue to be eligible for

benefit payments. No contributing employer shall be charged for benefits which are paid to the claimant during the period of the department-approved training. The relief from charges does not apply to the reimbursable employer that is required by law or election to reimburse the trust fund, and the employer shall be charged with the benefits paid.

Because Ms. Ausborn has been approved for department approved training beginning with the first week of her claim for benefits, she is not required to work, to be available for work, to search for work, or to accept work so long as she continues to make satisfactory progress in her studies during the period that she is approved for the department approved training. Thus, the fact that Ms. Ausborn reduced or eliminated her availability for work with Jordans' Nursery would have no impact on her eligibility for unemployment insurance benefits during the period for which she has been approved for department approved training.

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.

Iowa Admin. Code r. 871-24.25(26) 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:

(26) The claimant left to go to school.

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.

The evidence in the record indicates that Ms. Ausborn voluntarily quit the part-time employment effective August 22, 2014, so that she could commence full-time college studies on August 25, 2014. The quit was without good cause attributable to Jordans' Nursery and that employer will not be charged for benefits. Ms. Ausborn is disqualified for benefits *based on wages earned through the employment at Jordans' Nursery* until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. Ms. Ausborn remains otherwise eligible for benefits, provided she meets all other eligibility requirements.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times her weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

Because Jordans' Nursery is not a base period employer for purposes of the claim year that started for Ms. Ausborn on August 3, 2014 and that will end on August 1, 2015, Ms. Ausborn's quit from that employment will have no impact whatsoever on Ms. Ausborn's eligibility for benefits during the current claim year.

**DECISION:**

The claims deputy's August 26, 2014, reference 01, decision is modified as follows. The claimant has been approved for department approved training since the first week of her claim and, therefore, is exempted from the work availability requirements and job search requirements in Iowa Code section 96.4(3) during the period of department approved training so long as she continues to meet the department approved training requirements. The claimant is accordingly deemed to have satisfied the able and available requirements since establishing her claim for benefits. The claimant has not been partially unemployed or temporarily unemployed since she established her claim.

The claimant voluntarily quit part-time work with Jordans' Nursery, Inc., effective August 22, 2014. That employer will not be charged for benefits. The claimant is disqualified for benefits *based on wages earned through the employment at Jordans' Nursery* until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant remains otherwise eligible for benefits, provided she meets all other eligibility requirements. Because Jordans' Nursery is not a base period employer for purposes of the claim year that started on August 3, 2014 and that will end on August 1, 2015, the claimant's quit from that employment will have no impact whatsoever on her eligibility for benefits during the current claim year.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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