



## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits: Voluntary Quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Generally a quit is defined to be “a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.” 871 IAC 24.1(113)(b). Furthermore, Iowa Administrative Code 871—24.25 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.

Since the Employer had the burden of proving disqualification the Employer had the burden of proving that a quit rather than a discharge has taken place. The Iowa Supreme Court has thus been explicit: “the employer has the burden of proving that a claimant’s departure from employment was voluntary.” *Irving v. EAB*, slip op at 57, No. 15-0104 (Iowa 6/3/2016)(amended 8/23/16); On the issue of whether a quit is for good cause attributable to the employer the Claimant had the burden of proof by statute. Iowa Code §96.6(2). “[Q]uitting requires an intention to terminate employment accompanied by an overt act carrying out the intent.” *FDL Foods, Inc. v. Employment Appeal Board*, 460 N.W.2d 885, 887 (Iowa App. 1990), accord *Peck v. Employment Appeal Board*, 492 N.W.2d 438 (Iowa App. 1992).

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We have found credible the Employer’s testimony, and weigh it more heavily than the Claimant’s where the two conflict. In particular we find that the Claimant was made aware that the Employer was ready for her to return, and that the Claimant voluntarily quit her employment on July 21, 2020 by telling the Employer that she quit. Since the Claimant was aware that the Employer was back operating she did not quit for good cause attributable to the Employer. Moreover the Claimant does not assert any other reason for quitting that is good cause attributable to the Employer. Her quit was therefore disqualifying.

**Note to Parties On Effect of Decision:** Since the Administrative Law Judge allowed benefits and in so doing affirmed a decision of the claims representative the Claimant falls under the double affirmance rule:

871 IAC 23.43(3) Rule of two affirmances.

- a. Whenever an administrative law judge affirms a decision of the representative or the employment appeal board of the Iowa department of inspections and appeals affirms the decision of an administrative law judge, allowing payment of benefits, such benefits shall be paid regardless of any further appeal.

b. However, if the decision is subsequently reversed by higher authority:

- (1) The protesting employer involved shall have all charges removed for all payments made on such claim.
- (2) All payments to the claimant will cease as of the date of the reversed decision unless the claimant is otherwise eligible.
- (3) No overpayment shall accrue to the claimant because of payment made prior to the reversal of the decision.

*See also* Iowa Code §96.6(2)(2021). Thus the Employer's account may not be charged for any benefits paid so far to the Claimant for the weeks in question, but the Claimant will **not** be required to repay benefits already received.

This ruling would also apply to any Extended Benefits, CARES Act benefits, Continued Assistance Act benefits, and/or American Rescue Plan Act benefits the Claimant may have received for the weeks in question. *See In Re Claim of Jennifer Reed*, 21B-UI-11135 (EAB 09-21-2021).

We also note that the Claimant is already unable to collect regular benefits because of a decision issued by the Benefits Bureau which denied the Claimant the ability to draw *regular state benefits* as of March 28, 2021. That decision was issued because the Claimant had not earned eight times her weekly benefit amount since her original claim in March 2020. The Claimant did not appeal that determination. This determination is based on what is known as the "double dip" provision that effectively allows a Claimant, in normal years, to collect no more than 26 weeks of benefits on one job separation. If a claimant seeks a second benefit year based on the same separation then benefits will not be paid. Such a claimant would have to reattach to the labor market by earning **eight** times her weekly benefit amount. If she then *subsequently* lost work she would be eligible. The idea is that she then would have reattached to the labor market, lost work, and would be seeking benefits because of the loss of this subsequent job. Reattachment for this purpose is set at eight times the Claimant's benefit amount. (We note that the Claimant was eligible to collect federal PEUC despite the double dip disqualification, until the PEUC program terminated in Iowa on June 12, 2021).

When a Claimant is disqualified for quitting then that Claimant is disallowed until she reattaches to the labor market, and then loses work again. In other words the Claimant is disqualified for the period of unemployment caused by the quit. If she reattaches to the labor market, loses *that* work, and files for benefits she would be able to collect benefits, although the original employer would not be charged. Reattachment for this purpose is set at ten times the Claimant's benefit amount. So in its inscrutable wisdom the legislature has set reattachment to 8 times the benefit amount for second benefit years, but 10 times the benefit amount for quits.

The upshot for the Claimant is that our decision has a limited effect on her benefit rights. She has no overpayment from either federal or state benefits. Going forward rather than earning \$2,552 before she can again collect benefits she will have to earn \$3,190 (\$638 more) before she can again collect benefits.

The upshot for the Employer is that it will not be charged for the benefits paid to the Claimant in the past. As for the future, the latest wages earned with the Employer were in March of 2020, and they would not be in the base period of a claim filed as early as today. In any event the Employer would not be chargeable on a future claim because of the quit disqualification.

**DECISION:**

The administrative law judge's decision dated August 25, 2021 is **REVERSED**. The Employment Appeal Board concludes that the Claimant quit but not for good cause attributable to the employer. Accordingly, she is denied benefits until such time as the Claimant has worked in and was paid wages for insured work equal to ten times the Claimant's weekly benefit amount, provided the Claimant is otherwise eligible. See, Iowa Code section 96.5(1)(g). Because of the double affirmance the Claimant owes no federal or state overpayments.

No remand for determination of overpayment need be made under the double affirmance rule, 871 IAC 23.43(3), but still the Employer's account may not be charged.

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RRA/fnv