

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONELLE MULLIN

Claimant

APPEAL NO: 11A-UI-01554-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HIGLEY MANSION CARE CENTER

Employer

OC: 01/02/11

Claimant: Appellant (4/R)

Iowa Code § 96.5-1 - Voluntary Quit
871 IAC 24.27 - Voluntary Quit of Part-Time Employment

STATEMENT OF THE CASE:

Donelle Mullin (claimant) appealed an unemployment insurance decision dated February 3, 2011, reference 01, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Higley Mansion Care Center (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 7, 2011. The claimant participated in the hearing. The employer participated through Wendy Albers, Director of Nursing and Bob Niedermayer, Dietary Supervisor. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from her part-time employment qualifies her to receive unemployment insurance benefits?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a part-time cook from December 11, 2009 through her last day of work on December 27, 2010. She was scheduled to work on December 31, 2010 and January 1 and 2, 2011 but called in sick. The claimant never returned to work even though she was subsequently on the schedule for January 7, 11, 14 and 15, 2011. The employer's attendance policy provides that an employee is considered a voluntary quit if she is a no-call/no-show for three consecutive workdays. The claimant was a no-call/no-show for three days ending on January 14, 2011 and was considered to have voluntarily quit her employment.

The claimant contends that she called in on January 2 and 3, 2011 and asked when she was on the schedule. She was reportedly told she was not on the schedule so she filed for unemployment benefits. The claimant never returned to the facility to speak with her supervisor or human resources.

The claimant's supervisor received a call from the facility on January 7, 2010 wherein it was reported that there was no cook. This was the first the employer knew the claimant was not going to return to work. The claimant's supervisor had two dietary employees tell him that the claimant sent text messages to them asking about her schedule. Both employees reported they texted the claimant the days she was on the schedule.

The employer had previously offered the claimant more hours but she was upset that she would still have to work weekends, even though she was hired for weekends, so the employer had to hire another cook.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits.

Iowa Code § 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.

871 IAC 24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

The claimant was deemed a voluntary quit on January 14, 2011 after three days of no-call/no-show. It is her burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She failed to meet that burden and her separation was without good cause attributable to the employer.

However, an individual who quits part-time employment without good cause, yet is otherwise monetarily eligible based on wages paid by other base-period employers, shall not be disqualified for voluntarily quitting the part-time employment. Benefit payments shall not be based on wages paid by the part-time employer and charges shall not be assessed against the part-time employer's account. Once the individual has met the requalification requirements, the wages paid from the part-time employment can be used for benefit payment purposes. 871 IAC 24.27.

Based on this regulation, this matter is remanded to the Claims Section to determine whether the claimant is monetarily eligible to receive unemployment insurance benefits when the wage credits the claimant earned while working for the employer are not used in determining the claimant's monetary eligibility or her maximum weekly benefit amount.

DECISION:

The unemployment insurance decision dated February 3, 2011, reference 01, is modified in favor of the appellant. The claimant voluntarily quit her part-time employment for disqualifying reasons. Therefore, the employer's account will not be charged. This matter is remanded to the Claims Section to determine whether the claimant is monetarily eligible to receive unemployment insurance benefits and to determine what her maximum weekly benefit amount is when the wage credits the claimant earned from the employer are not taken into consideration to determine these two issues.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css