

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KEVIN CAVAN**  
Claimant

**UNITED PARCEL SERVICE**  
Employer

**APPEAL 18A-UI-00517-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/17/17**  
**Claimant: Respondent (3R)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(1)g – Voluntary Leaving/Requalification  
Iowa Code § 96.5(12) – Supplemental Part-time Employment  
Iowa Admin. Code r. 871-24.27 – Voluntary Quitting – Part-time Employment

**STATEMENT OF THE CASE:**

The employer filed an appeal from the January 4, 2018, (reference 01) unemployment insurance decision that allowed benefits based upon a determination that claimant was discharged due to absenteeism. The parties were properly notified of the hearing. A telephone hearing was held on February 6, 2018. The claimant, Kevin Cavan, participated. The employer, United Parcel Service, participated through Brett Snyder, Operations Supervisor.

**ISSUES:**

Did claimant voluntarily quit the part-time employment with good cause attributable to employer?

Has the claimant requalified or is he otherwise monetarily eligible for benefits?

Is the employer liable for benefit charges?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time, most recently as a ramp employee, from April 27, 2015, until August 22, 2017, when he was formally removed from the employer's system. On April 26, 2017, claimant went on short-term disability. Sometime that month or in early May, Snyder had a conversation with claimant about some changes that would be occurring at work. The two-day air network was closing and moving out of state, and claimant's position was possibly going to be affected by this closing. Snyder told claimant that if his position was affected, he would have two options. First, the employer would have work available for him at the "hub" in Des Moines. Second, claimant could go on temporary layoff until the employer had additional work available to him at the airport.

In mid-to-late May, claimant came to the employer and quit. He provided his security ID and told Snyder that it was not going to work out that he remain employed. Continued work was available, had claimant not quit his employment. The parties agree that claimant was also employed full-time with another employer.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$3,612.00, since filing a claim with an effective date of December 17, 2017, for the seven weeks ending February 3, 2018. The administrative record also establishes that the employer did not participate in the fact-finding interview, make a first-hand witness available for rebuttal, or provide written documentation that, without rebuttal, would have resulted in disqualification.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer, and has not requalified but appears to be otherwise monetarily eligible.

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 Code section 96.5(12) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

12. *Supplemental part-time employment.* 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.

Workers who are disqualified from part-time employment based upon the reason for the separation may be eligible to receive reduced unemployment insurance benefits, provided they have sufficient wage credits from other base-period employers to remain monetarily eligible, and provided they are otherwise eligible. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016); codified on July 2, 2017, at Iowa Code § 96.5(12). In this event, the part-time employer's account will not be assessed for benefits paid to claimant and the employer's wage credits will not be considered in determining benefits for claimant until he or she has requalified by having worked in and been paid wages for insured work equal to ten times their weekly benefit amount.

Iowa Code section 96.5(1)g 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. But the individual shall not be disqualified if the department finds that:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for

benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.27 provides:

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.

This rule is intended to implement Iowa Code section 96.5(1)"g."

See also, *McCarthy v. Iowa Emp't Sec. Comm'n*, 76 N.W.2d. 201 (Iowa 1956) wherein the court held that persons who become unemployed by a layoff from their full-time employer cannot be disqualified for a previous voluntary quit from a part-time employer.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's testimony more credible than claimant's testimony regarding the end of employment.

Iowa Admin. Code r. 871-24.25 provides:

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:

(27) The claimant left rather than perform the assigned work as instructed.

Inasmuch as claimant voluntarily quit his employment, the separation is disqualifying. However, the claimant has not requalified for benefits since the separation but appears to be otherwise monetarily eligible according to base period wages. Thus, he may be eligible for benefits based upon those other wages. The claimant's maximum and weekly benefit amounts will be redetermined until requalification. This may result in an overpayment of benefits.

**DECISION:**

The January 4, 2018, (reference 01), unemployment insurance decision is modified in favor of the respondent. The claimant voluntarily left the employment without good cause attributable to the employer and has not requalified for benefits but appears to be otherwise monetarily eligible. Benefits are allowed, provided he is otherwise eligible. The account of this part-time employer (048497) shall not be charged.

**REMAND:**

The issues of claimant's monetary eligibility and the proper amount of overpayment claimant has received are remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

lj/scn