

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CARL J NUSSRALLAH
Claimant

APPEAL 15A-UI-08558-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BIRDNOW ENTERPRISES INC
Employer

OC: 07/15/15
Claimant: Appellant (4)

Iowa Code § 96.5(1)a – Voluntary Quitting – Other Employment

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 27, 2015, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on August 21, 2015. The claimant participated personally. The employer participated through Brad Ohl, General Manager.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a finance director and was separated from employment on April 12, 2015, when he voluntarily resigned. The claimant left employment with Birdnow Enterprises Inc. to accept other employment at the Nissan store in Dubuque, Iowa. The claimant did not perform services for the Nissan store because after he accepted his offer of employment, the employer changed the pay scale for him. The claimant began a second period of employment from May 1, 2015 until June 30, 2015 with Birdnow Enterprises Inc., and has since been permanently separated from employment. (Reference 02 decision, amended by reference 04 decision).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment to accept employment elsewhere.

Iowa Code § 96.5(1)a 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:

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 § 96.8, subsection 5.

Iowa Admin. Code r. 871-24.28(5) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. The employment does not have to be covered employment and does not include self-employment.

Iowa Admin. Code r. 871-23.43(5) provides:

(5) Sole purpose. The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. No charge shall accrue to the account of the former voluntarily quit employer.

Even though the separation was without good cause attributable to the employer and would, standing alone, disqualify the claimant from receiving benefits, the claimant did leave in order to accept other employment. Accordingly, benefits are allowed and the account of the employer shall not be charged.

DECISION:

The July 27, 2015, (reference 01) decision is modified in favor of the appellant. The claimant voluntarily left the employment in order to accept other employment. Benefits are allowed based on this separation, provided the claimant is otherwise eligible. The account of the employer shall not be charged for benefits covered under the separation.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/css