

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VALERIE E BOURDON
Claimant

APPEAL NO. 12A-UI-10582-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

QPS EMPLOYMENT GROUP INC
Employer

OC: 10-24-12
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Able and Available
Iowa Code § 96.5(1)a – Voluntary Leaving/Other Employment

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 27, 2012, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on October 1, 2012. The claimant did participate. The employer did participate through their representative Rhonda Hefter, Human Resources Supervisor and Charles Macy, Acting Branch Manager.

ISSUES:

Did the claimant ask for and receive a leave of absence?

Did the claimant voluntarily quit to accept other employment?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was last assigned to work at Mrs. Clark's Foods as a full time employee beginning on February 21, 2012 through August 2, 2012 when she voluntarily quit to go to work at the state fair. The employer did not grant the claimant a leave of absence. The employer cannot physically force an employee to continue working, so when the claimant notified Mr. Macy that she was not going to work past August 2, she was specifically told that there was no guarantee she would be placed back in Mrs. Clark's assignment or that any additional assignments would be available when she returned. The claimant worked at the fair and has continued to file her claim for unemployment insurance benefits. She could have continued working for Mrs. Clark's had she not chosen to leave to work at the fair. She did not return to the employer to seek additional assignments until August 27, 2012.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work from August 5, 2012 through August 19.

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

871 IAC 24.23(23) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

The claimant refused to continue working in her assignment at Mrs. Clark's because she wanted to accept a job working at the state fair. She was never given any guarantee that any additional work would be available for her when and if she chose to return. She was not granted a leave of absence. The claimant worked at the state fair so many hours she was effectively not able to and available for work during the period she worked there which was through the end of the fair or August 12, 2012.

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

Iowa Code section 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 section 96.8, subsection 5.

871 IAC 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.

871 IAC 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 at the state fair and did perform services for the subsequent employer. Accordingly, benefits are allowed and the account of the employer shall not be charged.

DECISION:

The August 27, 2012 (reference 03) decision is modified in favor of the appellant. The claimant voluntarily left her employment in order to accept other employment. She was not able to and available for work from the period of August 2, 2012 through August 12, 2012. Benefits are allowed thereafter, provided the claimant is otherwise eligible. The account of the employer (account number 362504) shall not be charged.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs