

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CLAIMANT
Claimant

APPEAL 19A-UI-00049-DG

**ADMINISTRATIVE LAW JUDGE
PUBLIC DECISION**

EMPLOYER
Employer

**OC: 12/09/18
Claimant: Appellant (1)**

Iowa Code § 235B.6 – Sealed Record Confidential Information
Iowa Code § 96.5(1)a – Voluntary Quitting/Other Employment

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated December 31, 2018 (reference 01) that held claimant ineligible for unemployment insurance benefits. After due notice, an in-person hearing was scheduled for and held on March 21, 2019 in Des Moines, Iowa. Claimant participated. Employer participated. Employer's Exhibits 1-6 and Claimant's Exhibits A-F were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on October 2, 2018. Claimant told employer that she wanted to retire, and she was later offered independent contractor work from employer. Claimant signed an independent contractor agreement with employer on October 8, 2018.

Claimant began working for employer as a full-time direct support assistant on May 8, 2007. Claimant told employer that she would like to retire in July, 2018. Claimant sought information from employer about providing adult care services in her home as an independent contractor. Claimant filled out a host home independent contractor application on July 17, 2018. In that application, claimant stated that she was ready to retire and work at home.

Employer provided the information with the requested information, and it explained how she would be paid. Claimant was told that she would work from home, and she would receive no direct supervision of her daily tasks. Claimant would provide her home to the consumer, and she would be paid a monthly amount for room and board. Under the room and board contract she agreed to provide food and shelter to the consumer. Claimant was able to choose how to feed and care for the consumer each day. The employer would facilitate payment for her services which came from a federal program. Employer would receive a portion of the

proceeds, and claimant would receive \$154.83 a day for her services plus \$500.00 a month for room and board.

Continued work was available to claimant. The claimant left employment with employer where she was an hourly employee making \$14.50 an hour. Claimant entered into an independent contractor agreement to supply support services to a consumer where she would be paid through a federal program. Employer acted as an agent between the federal government and claimant. Claimant was later separated from the independent contractor employment.

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 section 96.5(1)a provides:

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

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.

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

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

24.28(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:

Charging of benefits to employer accounts.

23.43(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.

Iowa Admin. Code r. 871-24.25(19) 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. 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:

(19) The claimant left to enter self-employment.

Although the employment does not have to be “covered” or insured employment, it may not be self-employment, which falls under the definition of an independent contractor. Accordingly, entering into self-employment as an independent contractor is not a good cause reason attributable to the employer for leaving the employment and benefits are denied.

DECISION:

The December 31, 2018, (reference 01) decision is affirmed. The claimant voluntarily left the employment in order to accept other work as an independent contractor. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant’s weekly benefit amount, provided claimant is otherwise eligible.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/scn