

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRAN'DI M MCGOWAN
Claimant

APPEAL NO: 14A-UI-12666-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOME CHOICE LLC
Employer

OC: 01/05/14

Claimant: Respondent (4)

Section 96.5-1 - Voluntary Quit
871 IAC 24.27 - Voluntary Quit of Part-time Job

STATEMENT OF THE CASE:

Home Choice, L.L.C. (employer) appealed an unemployment insurance decision dated December 4, 2014, (reference 06), that concluded Bran'di M. McGowan (claimant) was eligible after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 7, 2015. A review of the Appeals Section's conference call system indicates that the claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Steve Melchior appeared on the employer's behalf. During the hearing, Employer's Exhibit One was entered into evidence. Administrative notice is being taken of the Agency's wage records. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant initially worked part time (approximately 30 hours per week) for the employer as a care giver in the employer's home care business. Effective August 24, 2014 she changed her availability by reducing her regular availability to two days (about 16 hours) per week. Her last day of work was September 12, 2014.

On September 13 the claimant requested to be unscheduled through at least September 25, 2014. She was then scheduled to work on September 29, but prior to her shift that day she sent an email to the employer's scheduler indicating, "I'm not going to make it to my scheduled shift today, I'll still be at my other job. So can you take me off the schedule." The scheduler immediately tried to call the claimant and left a message that the claimant needed to call in and speak to the employer about the scheduling, as making a schedule change like this by email was not appropriate. Also, the employer then was uncertain as to the claimant's intentions as to

how long she wanted to be taken “off the schedule.” However, the claimant did not contact the employer to discuss this.

Before September 29 the claimant had already been scheduled to work a shift on October 2; however, she was a no-call/no-show for that shift. The employer therefore concluded that when the claimant had asked to be taken “off the schedule” she must have meant that she was quitting. There was no further contact by the claimant until October 9 when she sent the scheduler a question by email as to why she had been taken off the schedule completely; the scheduler responded that the employer had assumed she had quit because of her statement in the September 29 email, her no-call/no-show on October 2, and her lack of communication between September 29 and October 9. The scheduler instructed the claimant that she should further discuss the matter with the employer’s co-owner, Melchior. The claimant never made any contact with Melchior.

The claimant filed a new claim for unemployment insurance benefits with an effective date of January 5, 2014. She reactivated the claim by filing an additional claim effective November 9, 2014. Her base period was established as being from the fourth quarter of 2012 through the third quarter of 2013. The claimant’s highest quarter of earnings during her base period was the third quarter of 2013, which did not include any wages from the employer. Her weekly benefit amount was determined based on the wages in the third quarter of 2013.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1.

Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). The intent to quit can be inferred in certain circumstances. For example, failing to report and perform duties as assigned is considered to be a voluntary quit. Rule 871 IAC 24.25(27). The employer reasonably concluded that the claimant’s actions that she had intended to quit; even if the claimant had not initially intended to quit, when she was given the opportunity to discuss the matter with the employer’s owner, she failed to do so. The claimant did exhibit the intent to quit and did act to carry it out. The claimant would normally be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. The claimant has not satisfied her burden.

Rule 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 voluntarily quit employment without good cause attributable to the employer. The job, however, was part time, and the claimant has sufficient wages from other employers in her base period to qualify to receive unemployment insurance benefits for the remainder of her benefit year effective January 5, 2014. The employer's account will not be subject to charge in any benefit year for benefits paid to the claimant based upon the employment which occurred in 2014. Should the claimant establish a new claim year with a base period in which wage credits from the employer are in the high quarter, she will need to have earned requalifying wages in subsequent employment in order to be eligible to receive benefits based upon the wage credits earned from the employer.

DECISION:

The unemployment insurance decision dated December 4, 2014 (reference 06), is modified in favor of the employer. The claimant is not disqualified and the employer's account is not subject to charge because the claimant voluntarily quit part-time employment without good cause attributable to the employer.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css