

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAREN S WILKINS
Claimant

APPEAL NO. 10A-UI-10538-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SOUTHEASTERN COMMUNITY COLLEGE
Employer

**OC: 05/30/10
Claimant: Respondent (5)**

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.4(5) – Between Academic Terms Disqualification

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 20, 2010, reference 01, decision that allowed benefits based on an Agency conclusion that the claimant had fulfilled her contract of hire on May 23, 2010. After due notice was issued, a hearing was held on November 8, 2010. Claimant participated. Michelle Foster, Director of Human Resources, represented the employer. The hearing in this matter was consolidated with the hearing in appeal number 10A-UI-10539-JTT. Exhibit One was received into evidence. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and wages reported by the claimant.

ISSUES:

Whether the claimant separated from the employment for a reason that would disqualify her for unemployment insurance benefits.

Whether the claimant's claim is subject to the between academic terms disqualification.

Whether the claimant had been able to work and available for work since she established her claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Karen Wilkins was employed as a part-time English as a Second Language (ESL) instructor at Southeastern Community College from June 2007 until May 31, 2010, when she voluntarily quit in response to changes in the conditions of her employment. Ms. Wilkins was a 60-70 percent of full-time employee. Due to budget constraints, including loss of grant funding, the employer decided to eliminate hours for ESL instructors during the month of June and to bring the ESL instructors back in July or August under reduced work hours. The elimination of work hours in June would eliminate Ms. Wilkins' eligibility for insurance and would require her to participate in a COBRA to continue her insurance coverage. The employer made this announcement on

May 7, 2010. In response to receiving the announcement, Ms. Wilkins verbally notified the employer that she would be resigning at the end of May to search for new employment and would not be returning to teach under the reduced hours in July or August.

Ms. Wilkins last performed work for the employer on or about May 23, 2010, but was paid through the end of May 2010 pursuant to her contract. On June 19, 2010, Ms. Wilkins submitted a letter to the employer for the sole purpose of obtaining payment of her accrued vacation hours. The employer required the letter before the employer would disburse the vacation pay. Ms. Wilkins had immediately began her search for new employment upon separating from the employer and made two or more employer contacts per week until she located new employment at the end of July 2010. After Ms. Wilkins started the new employment, she discontinued her claim for unemployment insurance benefits.

Ms. Wilkins established a claim for unemployment insurance benefits that was effective May 30, 2010. Ms. Wilkins received benefits for the period of May 30, 2010 through June 26, 2010. Ms. Wilkins reported substantial vacation pay for the week ending July 3, 2010 and did not receive unemployment insurance benefits for that week. Ms. Wilkins then received additional benefits for the period of July 4, 2010 through August 21, 2010. Ms. Wilkins received no benefits for subsequent weeks.

REASONING AND CONCLUSIONS OF LAW:

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

871 IAC 24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting.

See Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. Id. An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See Olson v. Employment Appeal Board, 460 N.W.2d 865 (Iowa Ct. App. 1990).

The weight of the evidence in the record establishes that the claimant voluntarily quit the employment effective May 23, 2010 in response to significant changes in the conditions of employment. These included a proposed period of unemployment during June 2010, loss of insurance benefits, and a reduction work hours should the claimant returned to work in July or August 2010. The claimant separation from the employment was for good cause attributable to the employer. The claimant is eligible for benefits provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

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 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The weight of the evidence indicates that the claimant was engaged in an active in earnest search for new employment and was both able to work and available for work from the time she filed her claim for benefits until the time she discontinued her claim for benefits after the week that ended August 21, 2010. Claimant was eligible for unemployment insurance benefits for the

period of May 30, 2010 through the week ending August 21, 2010, provided she was otherwise eligible.

The final issue was whether the claimant's claim for unemployment insurance benefits is subject to the between academic terms disqualification provision in Iowa Code section 96.4(5). It is not. The weight of the evidence indicates that the continued employment the employer offered to the claimant was not the same as the employment she had enjoyed up to that point. Instead the employer was offering reduced work hours without insurance benefits that had been part of the prior employment.

DECISION:

The Agency representatives July 20, 2010, reference 01, decision is modified as follows. Claimant voluntarily quit for good cause attributable to the employer on May 23, 2010. The claimant was able and available for work for the time she established her claim for benefits through the benefit week ending August 21, 2010. Claimant's claim for unemployment insurance benefits is not subject to the between academic terms disqualification provision contained in Iowa Code section 96.4(5). Effective May 30, 2010, the claimant was eligible for benefits, provided she is otherwise eligible.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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