

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JUAN I CORTES
Claimant

L A LEASING INC
Employer

APPEAL 15A-UI-09417-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/26/15
Claimant: Appellant (4-R)

Iowa Code § 96.5(1)d – Voluntary Quitting/Illness or Injury
Iowa Admin. Code r. 871-24.25(35) – Separation Due to Illness or Injury
871 IAC 24.27 – Voluntary Leaving Part-Time Employment

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 18, 2015, (reference 01) unemployment insurance decision that denied benefits based upon a voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on September 9, 2015. Claimant participated personally and was represented by attorney Todd Schmidt. Employer participated through president Nikki Kiefer and Unemployment Benefits Administrator Colleen McGuinty. Claimant's Exhibit A was received.

ISSUE:

Did 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: Claimant was employed as a temporary employee from February 17, 2015, through July 21, 2015, when he voluntarily quit.

Claimant's most recent assignment was as a general laborer at Tyson Supply. The assignment aggravated claimant's plantar fasciitis. Claimant called in sick due to foot pain on July 16, 2015. Claimant did not report to work on July 17 or July 20, 2015. On July 21, 2015, employer contacted claimant regarding his absences on July 17 and 20, 2015. Claimant returned employer's phone call and spoke with president Nikki Kiefer. Claimant informed Kiefer he was resigning his employment with employer as he had a full-time job.

The administrative record shows that the claimant has not requalified for benefits since his separation from employer, but has other base period wages attributable to his employment with TM Inc (203174). Based on the administrative record, it appears claimant was employed on a full-time basis with TM Inc. Based on the fact that claimant has reported little to no wages

during the weeks following his original claim date, it appears claimant has been separated from employment with TM Inc. The record is unclear as to whether claimant is otherwise monetarily eligible based on wages attributable to TM Inc. The agency has not issued an unemployment insurance decision based on claimant's separation from employment with TM Inc.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left this part-time employment without good cause attributable to the employer, but has not requalified and the record is unclear as to whether claimant is otherwise monetarily eligible after deletion of these wage credits.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.26(6)b 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:

(6) Separation because of illness, injury, or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

Here, claimant has shown adequate health reasons to justify resignation. Claimant may have notified employer of the health issue. However, claimant did not inform employer he would quit unless his injury was accommodated. Claimant claims he asked to be assigned back to Nordstrom. Employer denies this occurred and has simultaneous notes reflecting its conversations with claimant. I find employer's testimony on this point more credible. While claimant may have quit due to his foot pain, he did so with the knowledge that he also had full-time employment available to him. Claimant did not inform employer he would quit unless he was reassigned to Nordstrom and thus his quit is not for good cause attributable to employer.

Iowa Code § 96.5-1-g 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:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.27 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.

Inasmuch as claimant voluntarily resigned without good cause attributable to employer, the separation is disqualifying. The claimant has not requalified for benefits since the separation but may be otherwise monetarily eligible according to base period wages.

DECISION:

The August 18, 2015, (reference 01) decision is modified in favor of the appellant. The claimant voluntarily left the part-time employment without good cause attributable to the employer and has not requalified for benefits but may be otherwise monetarily eligible. Benefits are allowed, provided the claimant is otherwise eligible. The account of this employer shall not be charged.

The eligibility issue after the quit of this part-time employment as delineated in the findings of fact is remanded to the claims section of Iowa Workforce Development for an initial investigation and determination.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

cal/pjs