

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROD O'BRIEN
Claimant

APPEAL NO: 08A-UI-06519-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

AIRPORT LODGING LLC
Employer

OC: 06-08-08 R: 02
Claimant: Appellant (4R)

Section 96.5-2-a – Voluntary Quit/Part Time Employment
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 11, 2008, reference 03, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 30, 2008. The claimant participated in the hearing. The employer provided phone numbers for its witnesses but neither was available at the time of the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUE:

The issue is whether the claimant voluntarily left his employment for good cause attributable to the employer and whether he is able and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time server for Airport Lodging from December 2007 to June 10, 2008. He submitted his resignation notice so he could focus on his full-time job with Echo Valley Country Club. He was terminated from his position at Echo Valley soon after he resigned from Airport Lodging and is now working part-time nights at Cal's 2 restaurant while seeking a full-time day job.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer, has not requalified for benefits but is otherwise monetarily eligible and is able and available for work.

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.

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.

An individual who quits part-time employment without good cause, yet is otherwise monetarily eligible based on wages paid by other base-period employers, shall not be disqualified for voluntarily quitting the part-time employment. Benefit payments shall not be based on wages paid by the part-time employer and charges shall not be assessed against the part-time employer's account. Once the individual has met the requalification requirements, the wages paid from the part-time employment can be used for benefit payment purposes. 871 IAC 24.27. Based on this regulation, this matter is remanded to the Claims Section to determine whether the claimant is monetarily eligible to receive unemployment insurance benefits when the wage credits the claimant earned while working for the employer are not used in determining the claimant's monetary eligibility or his maximum weekly benefit amount.

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".

The claimant is able and available for work as he is actively and earnestly seeking daytime work because he is currently employed part-time nights at another restaurant.

DECISION:

The July 11, 2008, reference 03, decision is modified in favor of the claimant. The claimant voluntarily left his part-time employment but is able and available for work. Benefits are allowed, provided the claimant is otherwise eligible. This matter is remanded to the Claims Section to determine whether the claimant is monetarily eligible to receive unemployment insurance benefits when the wage credits the claimant earned while working for the employer are not used in determining the claimant's monetary eligibility or his maximum weekly benefit amount.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs