

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LASHIA K BROWN
Claimant

APPEAL NO: 13A-UI-00098-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MAINSTREAM LIVING INC
Employer

OC: 04/05/09

Claimant: Respondent (4)

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

STATEMENT OF THE CASE:

Mainstream Living, Inc. (employer) appealed a representative's December 24, 2012 decision (reference 06) that concluded Lashia K. Brown (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 12, 2013. The claimant participated in the hearing. Marcanne Lynch appeared on the employer's behalf and presented testimony from two other witnesses, Janine Linnenkamp and Carissa Lewis. During the hearing, Employer's Exhibit One was entered into evidence. Based on the evidence, the arguments of the parties, 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?

OUTCOME:

Modified. Benefits could be allowed, if otherwise eligible. Employer's account exempt from charge.

FINDINGS OF FACT:

After a prior period of employment with the employer, the claimant most recently started working for the employer on April 23, 2012. She worked part time approximately four hours per week as a supported living technician. Her last day of work was November 21, 2012.

The claimant had worked in a one-on-one setting with a consumer through July 10, 2012. She requested to be removed from that setting after that date because she felt she was not completing the required progress notes to her supervisor's satisfaction. However, while she had received some coachings about the progress notes, her job was not in jeopardy. She asked to

be returned to working in a group home setting as she had worked in her prior period of employment.

After July 10 the employer tried to place the claimant in several different group home settings, but the claimant declined to accept work in any of those settings; she expressed concern that the consumers in those homes had too high of needs, causing her concern of reinjury to her back. After the claimant declined the various alternative positions the employer sought to make available for her, the employer concluded that the claimant was no longer employed with the employer.

The wage credits from the claimant's most recent employment with the employer are not included in the base period of any claim open or pending as of the date of the hearing in this case. Agency records indicate that the claimant is currently not otherwise eligible for unemployment insurance benefits until she requalifies by earning ten times her weekly benefit amount after a September 4, 2012 separation from another employer.

REASONING AND CONCLUSIONS OF LAW:

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

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. 871 IAC 24.25(27). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would 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.

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 wage credits from other employers to qualify to receive unemployment insurance benefits if she is otherwise eligible. The claimant is not currently otherwise eligible because she has not yet requalified from a disqualifying September 4, 2012 separation from another employer. The employer's account will not be subject to charge for any benefits based on her wage credits during this period of employment with the employer that might be paid to the claimant in the future.

DECISION:

The unemployment insurance decision dated December 24, 2012 (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. Benefits would be allowed, if the claimant was otherwise eligible, which she is not.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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