

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMMY L BABYLON
Claimant

APPEAL NO. 08A-UI-01080-LT

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

STEVEN M KELLY PEDIATRIC DENTISTRY
Employer

**OC: 01/06/08 R: 12
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Leaving
Iowa Code § 96.4(4) – Monetary Eligibility and Subsequent Benefit Year
871 IAC 24.27 – Voluntary Leaving Part Time Employment

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 23, 2008, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on February 14, 2008. Claimant participated. Employer did not participate.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer and if she is monetarily eligible for a quit of part time employment determination.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a part time (30 hours) dental assistant from December 2004 until November 21, 2007 when she decided to quit after he yelled at a coworker in front of patients. The coworker did not quit. She told employer she was quitting to move out-of-state. The administrative record shows that the claimant has not requalified for benefits and is not otherwise monetarily eligible. The claimant's base period covers the fourth quarter of 2006 through the third quarter of 2007. The fourth quarter of 2007 is the lag quarter. Excluding this part time employer's wages, she was paid gross wages of \$1,046.00 in the second quarter of 2007, the highest earnings quarter of the base period. She did not have sufficient wages in the base period after deletion of this part time employer's wages to be eligible to draw benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer, has not requalified and is not otherwise monetarily eligible.

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.

871 IAC 24.25(2) and (21) provide:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(2) The claimant moved to a different locality.

(21) The claimant left because of dissatisfaction with the work environment.

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.

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.

Iowa Code § 96.4-4 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

4. The individual has been paid wages for insured work during the individual's base period in an amount at least one and one-quarter times the wages paid to the individual during that quarter of the individual's base period in which the individual's wages were highest; provided that the individual has been paid wages for insured work totaling at least three and five-tenths percent of the statewide average annual wage for insured work, computed for the preceding calendar year if the individual's benefit year begins on or after the first full week in July and computed for the second preceding calendar year if the individual's benefit year begins before the first full week in July, in that calendar quarter in the individual's base period in which the individual's wages were highest, and the individual has been paid wages for insured work totaling at least one-half of the amount of wages required under this subsection in the calendar quarter of the base period in which the individual's wages were highest, in a calendar quarter in the individual's base period other than the calendar quarter in which the individual's wages were highest. The calendar quarter wage requirements shall be rounded to the nearest multiple of ten dollars.

If the individual has drawn benefits in any benefit year, the individual must during or subsequent to that year, work in and be paid wages for insured work totaling at least two hundred fifty dollars, as a condition to receive benefits in the next benefit year.

Inasmuch as claimant ultimately decided to quit because of an issue between a coworker and employer and told employer she was leaving to move out of state, the separation is disqualifying. Effective July 1, 2007 claimant was required to have high quarter earnings of at least \$1,190.00 (based upon no dependents) to be able to draw benefits. She had only \$1,046.00. Because the claimant did not have sufficient wages in her base period from other employers she is not eligible to receive benefits during the current claim year beginning January 6, 2008.

DECISION:

The January 23, 2008, reference 01, decision is affirmed. The claimant voluntarily left the employment without good cause attributable to the employer, has not requalified for benefits and is not otherwise monetarily eligible. Benefits are denied.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css