

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALISON C EDDY
Claimant

MENARD INC
Employer

APPEAL NO: 13A-UI-03885-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/10/13
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit
871 IAC 24.25(4) – Job Abandonment
871 IAC 24.27 – Part-time Employment
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant appealed a department decision dated March 29, 2013, reference 01, that held she voluntarily quit without good cause on February 22, 2013, and benefits are denied. A telephone hearing was held on May 6, 2013. The claimant participated. Paul Hammell, Attorney, and Andrew Maw, Assistant General Manager, participated for the employer. Employer Exhibit One was received as evidence.

ISSUE:

Whether the claimant voluntarily quit with good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant worked a part-time cashier job for the employer from January 22, 2013 to February 21. She missed some work due to her pregnancy. She decided to stop going to work and quit employment without notice to the employer. She is expecting in about two weeks. Claimant thought she might be discharged in the future for missing work though the employer had accepted doctor excuses for past absences.

The department record shows claimant worked for Nurse in Home that reported first quarter 2012 wages in the amount of \$3,264.00. No other base period employer reported claimant earnings. The employer reported claimant earnings of \$792.00 for the first quarter 2013.

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.

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 administrative law judge concludes claimant voluntarily quit part time, non-base period without good cause attributable to the employer on February 22, 2013, due to job abandonment.

Although claimant had been missing work due to pregnancy, anticipation of a discharge for this reason is not the same as an actual employment termination. The employer had accepted some doctor excuses for past absences due to pregnancy issues, and whether it would discharge for this reason is speculation.

Although a voluntary quit of part-time, non-base period employment is not disqualifying, claimant's benefit eligibility depends on earnings from base period employer(s). The record does not establish claimant has the qualifying wages.

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 administrative law judge further concludes claimant is not currently able and available for work due to pregnancy. Claimant missing work for this reason now leading to her expected delivery in two weeks put at issue whether she can work at this time. She needs to obtain an unrestricted doctor's return to work release when she is able to work.

DECISION:

The department decision dated March 29, 2013, reference 01, is affirmed. The claimant voluntarily quit part-time, non-base period employment without good cause on February 22, 2013. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible. Claimant is not able and available for work.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/tll