

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRENDA S HAIN
Claimant

SYSTEMS UNLIMITED INC
Employer

APPEAL 18A-UI-09800-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/19/18
Claimant: Appellant (1R)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(1)g – Voluntary Leaving/Requalification
Iowa Code § 96.5(12) – Supplemental Part-time Employment
Iowa Admin. Code r. 871-24.27 – Voluntary Quitting – Part-time Employment

STATEMENT OF THE CASE:

Brenda S. Hain (claimant) filed an appeal from the September 20, 2018, reference 06, unemployment insurance decision that allowed benefits on wages from other employers in her base period but not the wages earned with Systems Unlimited, Inc. (employer) based upon the determination she voluntarily quit part-time employment without good cause attributable to the employer. The parties were properly notified about the hearing. A telephone hearing was held on October 10, 2018. The claimant participated personally. The employer participated through Human Resources Manager Jenny O'Brien and Supported Living Coordinator Pat Kraft. The Employer's Exhibit 1 was admitted into the record.

ISSUES:

Did the claimant voluntarily leave part-time employment with good cause attributable to the employer or did the employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?
Has the claimant requalified or is she otherwise monetarily eligible for benefits?
Is the employer liable for benefit charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part-time as a Direct Support Professional beginning on October 3, 2017, and was separated from employment on August 22, 2018. During the same period of time, the claimant has maintained regular employment with Cedar Rapids Community School District. She was hired to work 30 hours a week and is eligible for benefits through her employer. She continues to work in her regular employment at 30 hours per week and has reported those wages while filing weekly continued claims for unemployment insurance benefits. The issues of whether the claimant is partially unemployed and whether she is able to and available for work as she appeals to still be employed in the same hours and wages as in her

contract of hire with her regular employer have not been investigated and adjudicated by the Benefits Bureau of Iowa Workforce Development (IWD).

The claimant's supervisor was Rachel Smith. Any permanent assignments had to be approved by Smith's supervisor, Supported Living Coordinator Pat Kraft. The claimant was permanently assigned to weekend shifts at two locations, 554 and 559. During the summer months, when school was not in session, the claimant would pick up additional hours and shifts at other locations, but they were not considered part of her permanent assignment and the employer was regularly looking to hire employees to fill shifts as permanent assignments.

On August 22, 2018, the claimant met with Smith and Kraft. She informed them she would not be working at 554 effective immediately as she had issues with Smith. She also told them her last day at 559 would be September 1 as she no longer wanted to work weekends after her regular employment started again. Kraft informed the claimant if she quit her permanent assignments, there would not be any hours available to her. The claimant still decided to discontinue working her permanent assignments.

The administrative record shows that the claimant has not requalified for benefits since this separation by earning ten times her weekly benefit amount in insured wages. However, it also shows that she appears to be otherwise monetarily eligible for benefits after this part-time employer's wages are excluded from the base period.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged from employment but voluntarily left without good cause attributable to the employer, and has not requalified but appears to be otherwise monetarily eligible.

Iowa Code section 96.5, provides in relevant part:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

...

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The disqualification shall continue until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

...

12. Supplemental part-time employment. If the department finds that an individual is disqualified for benefits under subsection 1 or 2 based on the nature of the individual's separation from supplemental part-time employment, all wages paid by the supplemental part-time employer to that individual in any quarter which are chargeable following a disqualifying separation under subsection 1 or 2

shall not be considered wages credited to the individual until such time as the individual meets the conditions of requalification as provided for in this chapter, or until the period of disqualification provided for in this chapter has elapsed.

Iowa Admin. Code r. 871-24.25 provides, in relevant part:

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 section 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 section 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:

...

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

(22) The claimant left because of a personality conflict with the supervisor.

...

(27) The claimant left rather than perform the assigned work as instructed.

...

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

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 Form 65-5323, 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.

This rule is intended to implement Iowa Code section 96.5(1)"g."

The first issue is whether the claimant voluntarily quit her employment or if the employer discharged her for job related misconduct. The burden of proof rests with the employer to show that the claimant voluntarily left her employment. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). It requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge attributes more weight to the employer's version of events.

In this case, the claimant notified the employer of her desire to leave her permanent assignments. The employer notified her that if she chose to do that, they did not have any work available for her. The claimant still decided to leave her assignments. The claimant made a voluntarily decision to leave her employment. She then submitted a letter stating her intent. The employer has met the burden to show the claimant voluntarily left her employment.

The next issue is whether the claimant voluntarily left her employment with good cause attributable to the employer. The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). The claimant left her employment because she was having personality conflicts with her supervisor and no longer wished to work weekends while working her other job. The claimant has not established that she left work for good cause reasons attributable to the employer.

The final issue is whether the claimant may still be eligible for benefits based upon wages earned with other employers in her base period. If a claimant separates from supplemental part-time employment for a disqualifiable reason, he or she may still be eligible to receive

reduced unemployment insurance benefits, provided they have sufficient wage credits from other base-period employers to remain monetarily eligible, and provided they are otherwise eligible. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016); codified on July 2, 2017, at Iowa Code § 96.5(12). In this event, the part-time employer's account will not be assessed for benefits paid to the claimant and the employer's wage credits will not be considered in determining benefits for the claimant until he or she has requalified by having worked in and been paid wages for insured work equal to ten times their weekly benefit amount.

In this case, the claimant was working part-time for the employer to supplement her regular employment with Cedar Rapids Community School District. She left employment for disqualifying reasons. However, the administrative record shows she has sufficient wages in her base period from other employers to be monetarily eligible. The claimant is monetarily eligible for benefits based on those wages and the wages earned from this employer will not be counted in determining eligibility until she has requalified by having worked in and been paid wages for insured work equal to ten times her weekly benefit amount.

The issues of whether the claimant is partially unemployed and whether she is able to and available for work as delineated in the findings of fact are remanded to the Benefits Bureau of IWD for an investigation and determination.

DECISION:

The September 20, 2018, reference 06, unemployment insurance decision is affirmed. The claimant voluntarily left the employment without good cause attributable to the employer and has not requalified for benefits but appears to be otherwise monetarily eligible. Benefits are allowed, provided she is otherwise eligible. The account of this part-time employer (077443) shall not be charged.

REMAND:

The issues of whether the claimant is partially unemployed and whether she is able to and available for work as delineated in the findings of fact are remanded to the Benefits Bureau of IWD for an investigation and determination.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn