

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENISE L WELLS

Claimant

APPEAL NO: 15A-UI-00238-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 11/30/14

Claimant: Respondent (4)

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

STATEMENT OF THE CASE:

Casey's Marketing Company appealed an unemployment insurance decision dated December 30, 2014, (reference 01), that concluded Denise L. Wells (claimant) was eligible after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held at 9:30 a.m. on February 2, 2015. The claimant received the hearing notice and responded by calling the Appeals Bureau at 8:31 a.m. on February 2, 2015. She indicated that she would be available at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge called that number at the scheduled time for the hearing, the claimant was not available; therefore, the claimant did not participate in the hearing. Felisha Gates appeared on the employer's behalf and presented testimony from one other witness, Alisha Weber, on the issue of participation in the fact-finding interview. The record was closed at 9:58 am. At 1:08 p.m., the claimant called the Appeals Section and requested that the record be reopened. Administrative notice is being taken of the Agency's wage records. 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:

Did the claimant voluntarily quit for a good cause attributable to the employer, and if not, is the separation disqualifying?

OUTCOME:

Modified. Benefits allowed in current benefit year. Employer's account exempt from charge.

FINDINGS OF FACT:

The claimant received the hearing notice prior to the February 2, 2015 hearing. The instructions inform the parties that they are to be available at the specified time for the hearing, and that if they cannot be reached at the time of the hearing at the number they provided, the judge may

decide the case on the basis of other available evidence. The reason the claimant did not participate in the hearing was because she had fallen asleep in another room and did not hear her phone when the administrative law judge called for the hearing.

The claimant worked part time approximately 15 to 20 hours for the employer as a part-time cashier from August 15, 2014, to November 21, 2014 at the employer's Fairfield, Iowa store. She voluntarily quit employment on November 21. Her reason for quitting was that she was being moved from a cashier position to working in the kitchen because of having too many drive offs and shortages in the cashier position. She would have kept essentially the same hours and wages, but she was too embarrassed by having been taken off of the registers to feel comfortable to continue working at the store.

The claimant filed a new claim for unemployment insurance benefits with an effective date of November 30, 2014. Her base period was established as being from the third quarter of 2013 through the second quarter of 2014. The claimant's highest quarter of earnings during this base period was the second quarter of 2014, which did not include any wages from the employer. Her weekly benefit amount was determined to be \$159.00, based on her wages in the second quarter of 2014.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant's request to reopen the hearing should be granted or denied. After a hearing record has been closed the administrative law judge may not take evidence from a non-participating party but can only reopen the record and issue a new notice of hearing if the non-participating party has demonstrated good cause for the party's failure to participate. Rule 871 IAC 26.14(7)b. The record shall not be reopened if the administrative law judge does not find good cause for the party's late contact. Id. Failing to read or follow the instructions on the notice of hearing are not good cause for reopening the record. 871 IAC 26.14(7)c.

The claimant was not available at the scheduled time for the hearing because she had fallen asleep. Although the claimant intended to participate in the hearing, the claimant failed to be available as required by the hearing notice. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. The claimant did not establish good cause to reopen the hearing. Therefore, the claimant's request to reopen the hearing is denied.

If the claimant voluntarily quit her employment, she is normally not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. 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 claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would usually 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. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. Rule 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a coworker is not good cause. Rule 871 IAC 24.25(21), (6). Quitting rather than face disciplinary action is not good cause. Rule 871 IAC 24.25(28). The claimant has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. *O'Brien v. Employment Appeal Board*, 494 N.W.2d 660 (Iowa 1993); *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (FL App. 1973). The claimant has not satisfied her burden. Benefits would normally be denied.

Rule 871 IAC 24.27 provides in pertinent part:

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. ... 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 base period wages which do not include wages paid by the employer to qualify to receive unemployment insurance benefits in the current benefit year. The employer's account will not be subject to charge for benefits paid to the claimant.

DECISION:

The unemployment insurance decision dated December 30, 2014 (reference 01), is modified in favor of the employer. The claimant voluntarily left her employment without good cause attributable to the employer, but because the employment was part-time and there are sufficient qualifying base period wage credits, the claimant is not disqualified during the current benefit year. The employer's account is not subject to charge.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs