

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PHILIP S SHARON
Claimant

APPEAL 19A-UI-01877-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SHORT STAFFED INC
Employer

**OC: 01/20/19
Claimant: Respondent (4)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.28(5) – Quit for Other Employment
Iowa Admin. Code r. 871-23.43(5) – Quit for Other Employment
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the February 21, 2019, (reference 04) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 18, 2019. Claimant participated and testified. Employer participated through Vice President of Operations Jessica Hinojosa. Official notice was taken of the fact-finding documents.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Has the claimant been overpaid benefits?
Should benefits be repaid by claimant due to the employer's participation in the fact finding?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was last assigned at Lineage Logistics from September 5, 2018, to September 28, 2018 as a part-time laborer. Claimant was separated from the assignment and employment on September 28, 2019, when he voluntarily resigned because he had accepted other full-time employment on his uncle's farm. Claimant worked on the farm full-time until early January 2019, when no more work was available for the season. That work was not insured work and therefore those wages do not appear in claimant's wage history.

The claimant filed a new claim for unemployment insurance benefits with an effective date of January 20, 2019. The claimant filed for and received a total of \$2,863.00 in unemployment insurance benefits for the weeks between January 20 and March 9, 2019. The employer did not participate in a fact finding interview regarding the separation on February 19, 2019. The fact finder determined claimant qualified for benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment to accept employment elsewhere.

Iowa Code § 96.5(1)a 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:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5.

Iowa Admin. Code r. 871-24.28(5) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. The employment does not have to be covered employment and does not include self-employment.

Iowa Admin. Code r. 871-23.43(5) provides:

(5) Sole purpose. The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. No charge shall accrue to the account of the former voluntarily quit employer.

Claimant left his part-time, temporary, position with the employer to accept a regular full time position. Claimant worked at his new job from September 2018, until he was separated from employment in early January 2019 due to lack of work. Even though the separation was without good cause attributable to the employer and would, standing alone, disqualify the claimant from receiving benefits, the claimant did leave in order to accept other employment and did perform services for the subsequent employer before being separated from the new employment. Accordingly, benefits are allowed, provided the claimant is otherwise eligible, and the account of the employer shall not be charged.

As benefits are allowed, the issues of overpayment and participation are moot.

DECISION:

The February 21, 2019, (reference 04) unemployment insurance decision is modified in favor of the appellant. The claimant voluntarily left the employment in order to accept other employment. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer (account number 521584-000) shall not be charged. The issues of overpayment and participation are moot.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs