

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TENESHIA F WINDSOR
Claimant

APPEAL NO. 15A-UI-04817-JTT

**AMENDED
ADMINISTRATIVE LAW JUDGE
DECISION**

THOMAS L CARDELLA & ASSOCIATES INC
Employer

**OC: 03/15/15
Claimant: Appellant (4)**

Section 96.5(1)(a) – Voluntary Quit to Accept Other Employment

STATEMENT OF THE CASE:

This matter came back before the administrative law judge based on the claimant's timely request to reopen the record for good cause shown. Teneshia Windsor filed a timely appeal from the April 14, 2015, reference 03, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on an Agency conclusion that the claimant had voluntarily quit the employment on March 13, 2015 without good cause attributable to the employer. After due notice was issued, a hearing was held on June 11, 2015. Ms. Windsor participated. Jason Tylee represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 15A-UI-04818-JTT. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One, Two and Three into evidence.

ISSUES:

Whether Ms. Windsor separated from the employment for a reason that disqualifies her for benefits or that relieves the employer of liability for benefits.

Whether Ms. Windsor voluntarily quit the employment for the sole purpose of accepting other or better employment and performed work for the new employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Teneshia Windsor was employed by Thomas L. Cardella & Associates, Inc., as a full-time telephone service representative/customer care agent from July 2014 and last performed work for that employer on March 13, 2015. On March 6, 2015, Ms. Windsor provided the employer with a two-week written notice that she would be quitting effective Friday, March 20, 2015, due to another job opportunity. Ms. Windsor had accepted new employment at Great Clips. Ms. Windsor is a licensed cosmetologist and was set to begin the new employment on March 21, 2015. Though Ms. Windsor indicated March 20, 2015 would be her last day, the employer elected to end the employment effective Friday, March 13, 2015, due to the

employer's business needs. Ms. Windsor began her new employment at Great Clips on March 21, 2015 and performed work for the new employer.

Ms. Windsor established a claim for benefits that was effective March 15, 2015. Ms. Windsor received \$205.00 in benefits for the week ending March 21, 2015. Ms. Windsor continued her claim through the week that ended March 28, 2015, but did not receive benefits for that week because she reported \$300.00 in wages from the new employment. Ms. Windsor then discontinued her claim for benefits.

Ms. Windsor's base period for purposes of the March 15, 2015 claim for benefits consists of the fourth quarter of 2013 and the first, second and third quarters of 2014. Thomas L. Cardella & Associates, Inc., is one of Ms. Windsor's base period employers.

REASONING AND CONCLUSIONS OF LAW:

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Iowa Code section 96.5(1)(a) provides as follows:

Causes for disqualification.

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 section 96.8, subsection 5.

[Emphasis added.] The administrative law judge must follow the plain language of the statute.

Iowa Admin. Code r. 871-24.25(38) provides:

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:

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

The evidence in the record establishes that Ms. Windsor voluntarily quit the employment with Thomas L. Cardella & Associates effective March 20, 2015 and did so for the sole purpose of accepting other employment. The evidence also indicates that Ms. Windsor performed work for the new employer. Accordingly, Ms. Windsor's voluntary quit from Thomas L. Cardella & Associates did not disqualify her for unemployment insurance benefits. Ms. Windsor is eligible for benefits, including benefits for the week that ended March 21, 2015, provided she is otherwise eligible. The voluntary quit that was to be effective March 20, 2015 was without good cause attributable to Thomas L. Cardella. Because the employer elected to terminate the employment on March 13, 2015, rather than allow the claimant to perform work until her March 20, 2015 effective quit date, the employer's account may be charged for the \$205.00 in benefits that were paid to Ms. Windsor for the week that ended March 21, 2015. However, the employer would not be charged for benefits paid to the claimant for the period beginning March 22, 2015.

DECISION:

The April 14, 2015, reference 03, decision is modified as follows. The claimant voluntarily quit the employment with Thomas L. Cardella & Associates effective March 20, 2015 for the sole purpose of accepting other employment and performed work for the new employer. The claimant is eligible for benefits provided she meets all other eligibility requirements. The voluntary quit that was to be effective March 20, 2015 was without good cause attributable to the employer. Because the employer terminated the employment prior to the effective date, the employer's account may be charged for benefits paid to the claimant for the week that ended March 21, 2015. The employer's account will not be charged for benefits paid to the claimant for the period beginning March 22, 2015.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs