

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRIAN T GARLOW

Claimant

APPEAL 17A-UI-07807-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 07/02/17

Claimant: Appellant (4)

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:

The claimant filed an appeal from the July 27, 2017, (reference 02) unemployment insurance decision that denied benefits based upon voluntarily quitting the employment. The parties were properly notified about the hearing. A telephone hearing was held on August 18, 2017. Claimant participated. Employer responded to the hearing notice instructions but was not available at the number provided when the hearing was called and did not participate. Claimant's Exhibit A was received.

ISSUES:

Did claimant voluntarily quit the part-time employment with good cause attributable to employer?

Has the claimant requalified or is he 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: Claimant was employed as a part-time third-shift dry grocery/general stocker through June 5, 2017. He told the employer he quit due to personal reasons. The job description states: "An individual in this position will be expected to perform additional job related (sic) responsibilities and duties throughout the facility as assigned and/or as necessary." (Claimant's Exhibit A) In November 2016, the stocking and scheduling system changed and dry grocery/general stocker work was being moved solely to second shift. He preferred to work third shift because of his family needs. He did not sign a bid sheet for another job so various supervisors reassigned him to the dairy/deli frozen food section and rotated him into other areas such as general merchandise and maintenance/sanitation and cart pusher. Shortly after working in the refrigerated/frozen food areas he began having flu-like symptoms. He did not see a doctor about those or other health concerns related to those duties. He waited seven months to quit.

The administrative record shows that the claimant has not requalified for benefits since this separation but reflects he 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 voluntarily left the employment without good cause attributable to the employer, and has not requalified but appears to be otherwise monetarily eligible.

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.

Iowa Code section 96.5(12) provides:

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

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 Code section 96.5(1)g 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:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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 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.

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

See also, McCarthy v. Iowa Emp't Sec. Comm'n, 76 N.W.2d. 201 (Iowa 1956) wherein the court held that persons who become unemployed by a layoff from their full-time employer cannot be disqualified for a previous voluntary quit from a part-time employer.

Inasmuch as claimant acquiesced to the changes by continuing to work, the separation is disqualifying. However, the claimant has not requalified for benefits since the separation but appears to be otherwise monetarily eligible according to base period wages. Thus, he may be eligible for benefits based upon those other wages. His maximum and weekly benefit amounts will be redetermined until he requalifies.

DECISION:

The July 27, 2017, (reference 02), unemployment insurance decision is modified in favor of the appellant. 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 he is otherwise eligible. The account of this part-time employer (168629) shall not be charged.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs