

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUMMER K JAMES

Claimant

APPEAL NO. 17A-UI-09023-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST OAKS CONDOMINIUM ASSN

Employer

OC: 08/06/17

Claimant: Appellant (4R)

Iowa Code Section 96.5(1) – Voluntary Quit

Iowa Administrative Code rule 871-24.27 – Voluntary Quit from Part-time Employment

Iowa Code Section 96.5(1)(g) - Requalification

STATEMENT OF THE CASE:

Summer James filed a timely appeal from the August 28, 2017, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Ms. James voluntarily quit on May 12, 2017 without good cause attributable to the employer. After due notice was issued, a hearing was held on September 22, 2017. Ms. James participated. Konnie Mortenson represented the employer. Exhibits 1, 2, A, B and C were received into evidence. The administrative law judge took official notice of the agency's administrative record of the claimant's quarterly wages.

ISSUES:

Whether Ms. James' voluntary quit was for good cause attributable to the employer.

Whether the quit was from part-time employment.

Whether the employer's account may be charged for benefits.

Whether Ms. James has requalified for benefits subsequent to her separation from the employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: West Oaks Condominium Association (West Oaks) is a resort located in the Iowa Great Lakes region. Summer James was employed by West Oaks as a part-time weekend reservationist from 2011 until May 12, 2017, when she voluntarily quit. West Oaks' peak season runs from Memorial Day to Labor Day. During the peak season, Ms. James' usual work hours were Friday, 9:00 a.m. to 4:00 p.m., Saturday, 9:00 a.m. to at least 5:00 p.m. and possibly to 6:30 p.m., and Sunday, noon to 4:00 p.m. or 11:00 a.m. to 3:00 p.m. Saturdays are generally West Oaks' busiest times due to guest check-ins. In the off-peak season, Ms. James' Sunday hours were reduced to

noon to 2:00 p.m. Ms. James' hourly wage was \$14.00. Konnie Mortenson is the association's Manager and was Ms. James' immediate supervisor.

In mid-April 2017, Ms. James left a note on Ms. Mortenson's desk requesting time off on May 6 and May 27. Ms. James wanted to leave at 2:00 p.m. on Saturday, May 6, 2017, so that she could accompany her high school age daughter to a pre-prom photography event. Ms. James wanted Saturday, May 27 off so that she could participate in her college commencement ceremony at Buena Vista University. Ms. James had been unable to secure time off the previous year to join her daughter for pre-prom activities and had promised her daughter that she would be present for the pre-prom function on May 6, 2017. Ms. Mortenson was aware that Ms. James was about to graduate from college and hoped that Ms. James would continue in the part-time employment while Ms. James looked for full-time employment. West Oaks was at that point gearing up for its peak season and Ms. Mortenson hoped that Ms. James would stay at least through the summer peak season. In the note Ms. James left for Ms. Mortenson in mid-April, she asked for a response by Friday, April 21, 2017.

When Ms. James did not hear back from Ms. Mortenson by April 21, Ms. James left another note on Ms. Mortenson's desk indicating that she really needed to help her daughter on May 6 and needed someone to cover her shift at West Oaks at 2:00 p.m. that Saturday. Ms. James asked for a response by Monday, April 24. On Monday, April 24, Ms. James sent Ms. Mortenson a text message in which she again requested the time on May 6. On April 28, Ms. Mortenson left Ms. James a note indicating that Ms. Mortenson had a commitment at home on May 6 and could not commit to allowing Ms. James to leave early that day.

Ms. James and Ms. Mortenson spoke by phone a number of times on April 28, 2017. During one of those conversations, Ms. James' request for time off on May 6 came up and Ms. Mortenson again indicated that she could not at that time commit to granting Ms. James the requested time off, but would probably have an answer for Ms. James by the following Monday, May 1. Ms. Mortenson needed to speak with another employee to see whether the other employee could cover the Saturday hours. During the call, Ms. James also brought up her dissatisfaction with the housekeeping staff receiving a \$2.00 hourly wage premium when working on Saturdays. The wage premium bumped the housekeepers' wages to \$12.00 per hour. Ms. James asserted she should also get the \$2.00 per hour wage premium added to her Saturday work hours.

Before Ms. James left work that day, she left a resignation memo on Ms. Mortenson's desk. The memo stated as follows:

I am writing to submit my official letter of resignation from West oaks Resort, effective two weeks from today. May [sic] last day of work will be on May 12, 2017. As stated in my previous note on 4.21.17, I will not be available for work after 2:00 on May 6, 2017. Other than next Saturday, I will work my regular scheduled hours up until May 12, 2017.

On my part, this was not an easy decision. The past six years as a Professional Office Assistant have been extremely rewarding. I have taken the pleasure of working for you and managing West oaks on the weekends.

Thank you for the opportunities for development that you have provided me during the last six years. I wish everyone at West Oaks the best. It will be a pleasure to train and hand over my responsibilities to my replacement.

Upon receipt of Ms. James resignation memo, Ms. Mortenson contacted Ms. James and asked her to meet on Tuesday, May 2. At that meeting, Ms. Mortenson agreed to pay Ms. James the \$2.00 per hour bonus for Saturday work. In addition, Ms. Mortenson told Ms. James she could have the time off she requested for May 6 and 27. Ms. Mortenson asked Ms. James to commit to working for the employer through the busy summer season while Ms. James looked for new full-time employment. Ms. James said she would think about it.

On May 5, 2017, Ms. James told Ms. Mortenson that she would be willing only to remain in the employment through the end of May 2017 and only be willing to work a few weekends during that month. Ms. Mortenson told Ms. James that she had interviewed a replacement employee, would be conducting a second interview with the employee, and if there were no red flags, the employer was going to stick with the May 12, 2017 effective quit date Ms. James had provided in her April 28 resignation memo. Ms. James worked until May 12, 2017 and then separated from the employment. Ms. James had not accepted new employment at the time she resigned or separated from the employment with West Oaks.

During Ms. James' period of employment with West Oaks, she had other, seasonal employment with C.P., Inc., d/b/a H & R Block. Ms. James last performed work for C.P., Inc. during the first quarter of 2017. On June 30, 2017, C.P., Inc., issued a bonus check to Ms. James in the net amount of \$1,083.62 for gross bonus of \$1,440.85. The bonus was based entirely on work Ms. James had performed earlier in the year, prior to her May 12, 2017 separation from West Oaks. The bonus check was initially rejected by Ms. James' bank due to insufficient funds. C.P., Inc., subsequently paid Ms. James the bonus amount through alternative means.

After Ms. James separated from West Oaks, she obtained new employment with Creative Small Business Solutions as a part-time payroll and accounting employee. Ms. James began the employment in mid-June 2017 and last performed work for that new employer on August 10, 2017. Ms. James wages from this new employment totaled \$2,880.00.

Ms. James established an unemployment insurance claim that was deemed effective August 6, 2017. Workforce Development calculated Ms. James weekly benefit amount to be \$360.00. Ms. James' base period for purposes of the claim that was effective August 6, 2017 consists of the second, third and fourth quarters of 2016 and the first quarter of 2017. Ms. James base period wages derive from her employment with C.P., Inc. and West Oaks.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides:

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.

Iowa Admin. Code r. 871-24.25(18) 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:

(18) The claimant left because of a dislike of the shift worked.

Iowa Admin. Code r. 871-24.25(37) 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:

(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.

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).

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d 213 (Iowa 2005).

The evidence in the record established a voluntary quit that was without good cause attributable to the employer. On April 28, Ms. Mortenson indicated that she would likely have a response for Ms. James by May 1. Ms. Mortensen elected not to wait for May 1 and elected instead to submit a resignation on April 28 with a May 12 effective quit date. The employer's delayed response to the request to time off may have prompted a reasonable person in Ms. James position to not continue to press the issue. However, the employer's delayed response did not constitute intolerable or detrimental working conditions that would have prompted a reasonable person to leave the employment. Ms. James had been hired specifically to work weekend hours. The employer reasonably expected Ms. James to be available to work the weekend hours. The employer's initial denial of Ms. James request for the \$2.00 Saturday wage premium did not constitute an intolerable or detrimental working condition. Ms. James established wage was \$14.00 per hour. The employer had not decreased the wage. The evidence indicates that the employer accepted Ms. James April 28, 2017 resignation on May 5, 2017. By that point, the employer had acquiesced in the \$2.00 per hour Saturday wage premium and in the time-off

requests. The employer elected to accept the resignation after Ms. James indicated that she would in essence only be willing to stay two and a half weeks longer and during that time would not make herself available for her regular work hours. The employer was not obligated to acquiesce in Ms. James proposed changes to the employment that would be detrimental to the employer.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times her weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See Iowa Administrative Code rule 871-24.27.

Because Ms. James voluntarily quit this part-time employment without good cause attributable to the employer, she is disqualified for benefits based on the wages from this employment until she has, subsequent to her separation from the employment, worked in and been paid wages for insured work equal to ten times her weekly benefit amount. This employer's account shall not be charged for benefits paid to Ms. James. Because Ms. James' has sufficient base period wages from the C.P., Inc., employment to be monetarily eligible for benefits, she remains eligible for reduced unemployment insurance benefits, based on the C.P., Inc., employment, provided she meets all other eligibility requirements. This matter will be remanded to the benefits bureau for determination of the reduced benefit amount that excludes the wage credits from the West Oaks employment.

Iowa Code section 96.5(1)g provides:

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. 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.

Ms. James has not "requalified" for benefits since her May 12, 2017 separation from West Oaks. Only Ms. James \$2,880.00 in wages from the Creative Small Business Solutions can be counted toward the requalification requirement. The C.P., Inc. bonus is based on work performed prior to Ms. James' separation from West Oaks and cannot be counted toward the requalification requirement. Because Ms. James' weekly benefit amount has been set at \$360.00, Ms. James would have to have earned and been paid \$3,600.00 in wages for new insured work performed subsequent to the May 12, 2017 separation from West Oaks before she would meet the requalification requirement. Thus, the base period wages from the West Oaks employment cannot be added to the claim at this time. If and when Ms. James satisfies the requalification requirement, the West Oaks wages may be added to the claim, but West Oaks will still not be charged for benefits.

DECISION:

The August 28, 2017, reference 01, decision is modified as follows. The claimant voluntarily quit the part-time employment on May 12, 2017 without good cause attributable to the employer. The claimant is disqualified for *benefits that are based on the base period wage credits from this employer* until she has worked and been paid wages for insured work equal to ten her weekly benefit amount. The employer account of West Oaks will not be charged for benefits. The claimant is eligible for reduced benefits *based on base period wage credits from her other base period employment* provided she meets all eligibility requirements. The claimant has not yet satisfied the requalification requirement and, therefore, the base period wages from the West Oaks employment will not be added to the claim at this time.

This matter is remanded to the Benefits Bureau for redetermination of the claimant's weekly benefit amount excluding the base period wages from West Oaks.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs