

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTIN L MONTEQUIN
Claimant

APPEAL NO. 14A-UI-04234-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION
Employer

OC: 09/01/13
Claimant: Appellant (4-R)

Iowa Code Section 96.5(1) – Voluntary Quit
871 IAC 24.27 – Voluntary Quit of Part-time Employment

STATEMENT OF THE CASE:

Kristin Montequin filed a timely appeal from the April 15, 2014, reference 02, decision that disqualified her for benefits based on an agency conclusion that she had voluntarily quit employment with Target on January 23, 2014 without good cause attributable to that employer. After due notice was issued, a hearing was held on May 12, 2014. Ms. Montequin participated. Stephanie Robinson represented the employer.

ISSUES:

Whether Ms. Montequin's voluntary quit was for good cause attributable to Target Corporation.

Whether Ms. Montequin's voluntary quit disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Kristin Montequin established a claim for benefits that was effective September 1, 2013, but has not yet received any benefits in connection with the claim. On November 23, 2013, Ms. Montequin started part-time seasonal employment with Target in Sioux City. Ms. Montequin asked the employer when the seasonal employment would end and the employer said sometime in January or February 2014. Ms. Montequin averaged 20-30 hours per week in the employment. In late December 2013, the employer decided to keep Ms. Montequin on as a permanent, part-time employee. The employer did not discuss that decision with Ms. Montequin until January 23, 2014, when Ms. Montequin inquired about when the seasonal employment was set to end. At that time, Ms. Montequin learned that the seasonal employees had stopped working on January 18, 2014, but that the employer intended to keep her on permanently. Ms. Montequin told the employer that she needed to travel to Tennessee to deal with a family emergency. Ms. Montequin did not specify the nature of the family emergency. Ms. Montequin told the employer she would update the employer in a couple weeks. In response, the employer took Ms. Montequin off the schedule and waited to hear from Ms. Montequin. When the employer had still not heard from Ms. Montequin by March 18, 2014, the employer documented Ms. Montequin as a voluntary quit. At some point after that, Ms. Montequin spoke to a member

of management at a time when she had gone to the Target store to shop. Ms. Montequin spoke with the member of management only for the purpose of determining whether she needed to return employer-issued materials. Ms. Montequin never contacted the employer to attempt to return to work.

Ms. Montequin had traveled to Tennessee on or about January 23, 2014 to collect her adult brother from a mental health institution. Ms. Montequin's brother is diagnosed with bipolar disorder. The brother resided in Tennessee. Ms. Montequin and her family are originally from Maryland. At the time Ms. Montequin's brother was being discharged from the mental health facility in Tennessee, Ms. Montequin's parents were in the process of relocating to Florida. Ms. Montequin indicates that her father is disabled and that this is the reason why it was necessary for her to collect her brother and bring him to Iowa. On February 4, 2014, Ms. Montequin arrived back in the Sioux City area with her brother. Ms. Montequin did not believe she could leave her brother unsupervised. Ms. Montequin also has a disabled child and, for that reason, was not interested in permanent employment with Target.

Target is not a base period employer for purposes of the claim year that started for Ms. Montequin on September 1, 2013.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)(c) and (f) provides as follows:

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:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

* * *

f. The individual left the employing unit for not to exceed ten working days, or such additional time as may be allowed by the individual's employer, for compelling personal reasons, if so found by the department, and prior to such leaving had informed the individual's employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist the individual returned to the individual's employer and offered the individual's services and the individual's regular or comparable work was not available, provided the individual is otherwise eligible; except that during the time the individual is away from the individual's work because of the continuance of such compelling personal reasons, the individual shall not be eligible for benefits.

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.

The evidence in the record indicates that Ms. Montequin voluntarily quit the part-time employment for multiple reasons. First and foremost, Ms. Montequin was not interested in on-going employment with Target. Ms. Montequin needed a short amount of time to collect her mentally ill brother from Tennessee and bring him to Iowa. Ms. Montequin had completed that task as of February 4, 2014. Ms. Montequin indicates that she could not leave her brother unsupervised, but has provided no medical documentation to substantiate that assertion. The weight of the evidence indicates that Ms. Montequin was in a position to return to the employment as of February 5, 2014 if she had desired to return to the employment. Ms. Montequin did not return to the employer because she did not desire to continue in the employment.

Ms. Montequin voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Montequin is disqualified for benefits *based on wages earned from the employment with Target* until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Montequin.

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 871 IAC 24.27.

Ms. Montequin remains eligible for benefits based on her base period wages, provided she is otherwise eligible. The *separation* from the part-time employment with Target would not disqualify Ms. Montequin for benefits in connection with the claim year that started for Ms. Montequin on September 1, 2013. This is because Target is not a base period employer.

Ms. Montequin's testimony raises the issue of whether she has been available for work within the meaning of the law since she filed the additional claim for benefits that was effective March 23, 2014. This matter will be remanded for adjudication of that issue.

DECISION:

The claims deputy's April 15, 2014, reference 02, decision is modified as follows. The claimant voluntarily quit the part-time employment without good cause attributable to the employer. The claimant is disqualified for benefits *based on wages earned from the employment with Target* until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits. The claimant remains eligible for benefits based on her base period wages, provided she is otherwise eligible.

This matter is remanded to the Benefits Bureau of determination of whether the claimant has been available for work since she established the additional claim for benefits that was effective March 23, 2014.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs