

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NIKKI C ZELINSKY
Claimant

ABRH LLC
Employer

APPEAL 15A-UI-09647-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/12/15
Claimant: Appellant (4-R)

Iowa Code § 96.5(1)a – Voluntary Quitting – Other Employment

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 18, 2015, (reference 01) 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 September 14, 2015. Claimant participated. Employer participated through general manager Tiffany Wilkinson and Dena Shelton of Equifax/Talx represented the employer.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a server at the Village Inn in Ankeny, Iowa, from November 2014, and was separated from employment on July 24, 2015, when she quit. Her last day of work was July 3, 2015, when she had performance issues (guest complaints) causing Wilkinson to assign her duties away from customers. When Wilkinson told her she wanted to meet with her, claimant became very anxious and said she was leaving to see a doctor. Wilkinson instructed her to bring a medical release to be able to return to work. Claimant went home but did not go to a doctor. Wilkinson told her she took her off the schedule pending receipt of a medical release and meeting about the guest complaints and related work performance. When claimant contacted Wilkinson and told her she had seen her lawyer, Wilkinson told her she would have to get the employer's legal representative involved also and would schedule their meeting accordingly. Continued employment was available with a medical release and meeting about the job performance issue. Claimant did not comply with either request and on July 24 notified Wilkinson that she found other employment and quit. The other employment was with Hy-Vee that began July 20, 2015. Claimant has no other wages in the base period, other than with ABRH (Village Inn).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment on July 24, 2015, 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 section 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.

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 is performing services for the subsequent employer. Accordingly, benefits are allowed, provided claimant is otherwise eligible. The account of the employer shall not be charged.

DECISION:

The August 18, 2015, (reference 01) unemployment insurance decision is modified in favor of the appellant. The claimant voluntarily left the employment on July 24, 2015, in order to accept other employment. Benefits are allowed effective July 26, 2015, *provided she is otherwise eligible*. The account of the employer (account number 0534880) shall not be charged.

REMAND:

The ability to and availability for work issue delineated in the findings of fact for the period from July 12, 2015 through July 25, 2015; and the question of whether claimant is partially unemployed as of July 26, 2015, are remanded to the Benefits Bureau of Iowa Workforce Development for initial investigations and determinations.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs