

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH M PINGREE
Claimant

APPEAL NO. 07A-UI-04024-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF OELWEIN
Employer

**OC: 03/18/07 R: 04
Claimant: Appellant (2)**

Section 96.5-1 - Voluntary Quit
871 IAC 24.27 - Voluntary Quit of Supplemental Employment

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 11, 2007, reference 02, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on May 7, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Durango Steggall participated in the hearing on behalf of the employer. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show the claimant filed a claim for unemployment insurance benefits effective March 19, 2006, after his employment with Tyson Retail Deli Meats Inc. ended. His average weekly wage based on his high quarter wages was \$626.09. The claimant filed another claim for benefits. If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant filed a claim for unemployment insurance benefits with an effective date of March 19, 2006, after his full-time employment with Tyson Retail Deli Meats Inc. ended due to a plant closing. His average weekly wage based on his high quarter wages was \$626.09. His weekly benefit amount was determined to be \$324.00 based on his wages with Tyson.

The claimant was considered to be a dislocated worker due to layoff due to a plant closure. He was informed about training benefits available to dislocated workers including department approved training to upgrade his skills to obtain suitable employment. He had decided to attend college in the fall of 2006.

In June 2006, the claimant learned that the employer needed a temporary seasonal employee to work as a city park worker. The job paid \$5.15 per hour. The job was temporary because the employer needed someone to replace an employee on medical leave. The claimant was told

that the employee's return date was unknown. He let the supervisor know about his plans to attend school in the fall.

The claimant worked for the employer from June 12, to August 18, 2006, and was paid \$2,266.00 in wages. His hours varied from about 36 to 40 hours per week. Because the job paid minimum wage, the claimant filed claims for partial unemployment insurance benefits because his weekly wages were substantially less than his weekly benefit amount each week. The claimant never considered the job to be more than supplemental employment until he returned to school.

The claimant left employment after August 18, 2007, to attend Hawkeye Community College. When the claimant left employment, the employer still had seasonal work available until November 2006 because the worker on leave had not returned yet. There was no discussion about the claimant staying, because he and his supervisor understood the arrangement that he was going to be attending school in the fall. He applied for and received department approved training and received unemployment insurance benefits until he exhausted.

The claimant filed a claim for another benefit year effective March 18, 2007. The employer is a base period employer on the claimant, but his benefit amount was determined based on his employment with Tyson. The claimant would be monetarily eligible for benefits even without the wages from the employer.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer.

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.

871 IAC 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.

Since the claimant left work when there was work available, he voluntarily quit employment without good cause attributable to the employer. The job must be considered supplemental employment. It paid the claimant about one-third of what he had been paid in his regular full-time job and paid the claimant more than \$100.00 less than his weekly benefit amount. The job did not provide the claimant with 40 hours of work every week and was temporary when the claimant accepted the job. It is factually indistinguishable from supplemental part-time employment. The claimant has sufficient wages from other employers to qualify to receive unemployment insurance benefits. Pursuant to the rule, the employer's account will not be subject to charge for benefits paid to the claimant.

The representative who made the initial determination treated the job as a quit of part-time work but apparently decided that because the claimant needed \$250.00 in wages after he applied for benefits in March 2006 to qualify for a second benefit year under Iowa Code section 96.4-4, that if the separation was treated as a part-time quit, the wages from the employer could not be used for \$250.00 requirement. The purpose of Iowa Code section 96.4-4, however, is to not allow a claimant to draw benefits in two benefit years unless they have worked and been paid wages of at \$250.00 in a job after the beginning of the first benefit year. The claimant clearly has satisfied that requirement even if the part-time wages are not used to determine his weekly benefit amount or maximum benefit amount.

DECISION:

The unemployment insurance decision dated April 11, 2007, reference 02, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw