

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EDGAR L RAMIREZ
Claimant

APPEAL NO. 12A-UI-12679-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NEW HOPE VILLAGE INC
Employer

**OC: 08/28/11
Claimant: Appellant (4-R)**

Section 96.5-1 - Voluntary Quit
Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 11, 2012, reference 10, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on November 26, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Sonya Stearns participated in the hearing on behalf of the employer with a witness, Jennifer Daniel. Exhibits One and A were admitted into evidence at the hearing. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show the claimant's weekly benefit amounts was \$473.00 and the employer has already been determined exempt from charge for benefits paid during the benefit year from August 28, 2011, through August 26, 2012. 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.

ISSUES:

Did the claimant voluntarily quit employment part-time work without good cause attributable to the employer?

Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant filed a new claim for unemployment insurance benefits effective August 28, 2011, after completing a military deployment in Afghanistan. The claimant's weekly benefit amount was determined to be \$473.00 per week and was based on his military wages and wages from the employer while he was working full time for the employer.

The claimant received department approved training that allows claimants to receive benefits while in school and waives the requirement of looking for work and being available for work. He began department approved training August 27, 2011, and currently has department approved training through January 12, 2013.

The claimant returned to work for the employer as a direct care worker on April 27, 2012, in a part-time weekend position. He had worked for the employer full time before his military deployment. When he returned from Afghanistan, he only wanted to work part time for the employer because he was going to community college to obtain a nursing degree. He was only working six hours per week and his rate of pay was \$9.58 per hour. He worked from April 27 to June 3, 2012, in this part-time position and earned wages totaling \$1,543.00. The claimant reported receiving \$100.00 in wages for the week ending April 28, 2012.

From June 8 to June 23, the claimant had required National Guard training at Camp Riley and was on a military leave of absence from the employer, during this time period. He had a seizure on June 19, 2012, that was related to some mental health issues he was dealing with. At the end of June, the claimant notified the employer that he had medical issues during his training and he did not know when he would be returning to work.

The claimant was told he would have to obtain a medical leave of absence to preserve his employment. His supervisor and the benefits specialist met with the claimant on July 13 and he was given a leave of absence form to fill out and a certification form for his healthcare provider to complete. When the benefits specialist had not received the completed leave of absence form by the deadline of July 20, she mailed out a second set and set up a new deadline of July 27 to submit the request. On August 9, the benefit specialist sent out another letter explaining that no leave of absence form had been received and if he did not submit the leave of absence form and healthcare provider certification by August 17, the employer would assume he was no longer interested in work. The claimant received the letter on August 11, 2012, but was dealing with mental health issues and decided not to submit the leave of absence form.

The claimant was attending school while he worked for the employer and over summer months and is currently attending school despite the mental health issues.

The employer has already been determined exempt from charge for benefits paid during the benefit year from August 28, 2011, through August 26, 2012.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a.

871 IAC 24.27 provides that a claimant who voluntarily quits part-time employment without good cause and has not requalified for benefits, 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. Instead, the benefit payments will be made based on the wages from the other employers, and the part-time employer's account will not be charged for benefits paid.

The claimant quit his part-time employment without good cause attributable to the employer when he decided not to request a leave of absence, understanding that would mean his employment would end. The claim in this case, however, is not based on his part-time employment with the employer, so he is not subject to a voluntary quit disqualification.

The law provides that a person may receive unemployment insurance benefits while attending a training course approved by the department and need not be available for work or actively seeking work while attending the approved training course. The claimant must show

satisfactory attendance and progress to receive benefits. 817 IAC 24.39. The evidence shows that the claimant was in a training course approved by the department from August 27, 2011, until the present time. Despite his health issues, he has continued to attend his coursework and would not be subject to disqualification based on not being available for work.

The claimant, however, was not attending the training course while he was receiving National Guard training scheduled from June 8 through June 23, 2012. In addition, he would have been paid wages for this, which he did not report. He was, therefore, ineligible for benefits for the weeks ending June 16 and 23.

The evidence raises an issue of whether the claimant failed to properly report his work and earnings while working for the employer from April 27 to June 3, 2012. This issue was not included on the notice of hearing and must be remanded to the Agency to determine. It is possible that the claimant never exceeded his earnings limit of \$118.00 per week, but he should have reported his earnings each week for the Agency to make that decision.

DECISION:

The unemployment insurance decision dated October 11, 2012, reference 10, is modified in favor of the claimant. The claimant is not subject to a voluntary quit disqualification because he quit part-time work and his claim is based solely on wages from his past full-time employers. The claimant is denied benefits for the weeks ending June 16 and 23 because he was attending and being paid for National Guard training during these weeks. The issue of whether the claimant failed to properly report his work and earnings while working for the employer from April 27 to June 3, 2012, is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css