

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NANCY K BEEDE
Claimant

APPEAL NO. 09A-UI-08901-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SDH EDUCATION WEST LLC
Employer

**Original Claim: 12/28/08
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Leaving
871 IAC 24.27 – Voluntary Leaving Part Time Employment

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 19, 2009, reference 01, decision that allowed benefits based upon a quitting of part-time employment. After due notice was issued, a telephone conference hearing was held on July 7, 2009. Claimant participated. Employer participated through Jeff Halverson.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked part-time as a dish room worker and was separated on March 4, 2009, when she gave employer a letter of resignation. She had back surgery in February 2009 and has restrictions of lifting no more than 20 pounds and no bending as of May 26, 2009. Claimant believes the injury is work related but did not report it as such to the employer, does not have medical documentation of the causation, and does not know when the injury occurred – only that she returned to work in August 2008 and began having pain in January 2009. At hearing, she stated, “I prefer not to go back to work right now” when asked if she would be interested in applying for a sedentary cashier job with employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer, but has not re-qualified and may be otherwise monetarily eligible.

Iowa Code § 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.

Iowa Code § 96.5-1-g 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:

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.

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.

Inasmuch as claimant quit while recovering from non-work-related back surgery, the separation is disqualifying. However, the claimant has not re-qualified for benefits since the separation and may be otherwise monetarily eligible according to base period wages. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The June 19, 2009, reference 01, decision is affirmed. The claimant voluntarily left the employment without good cause attributable to the employer and has not re-qualified for benefits but may be otherwise monetarily eligible. Benefits are allowed, provided the claimant is otherwise eligible (see appeal 09A-UI-08902-LT). The account of this employer (308407) shall not be charged.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw