

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAURA RAYA
Claimant

APPEAL NO. 12A-UI-14552-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CMB REGIONAL CENTERS
Employer

OC: 01/01/12
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 December 5, 2012 (reference 02) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on January 14, 2013. Claimant participated. Employer participated through company Senior Vice President Kraig Schwigen and Director of Company Operations Pam Ellis. Claimant's Exhibit A was received.

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 full time as an executive assistant from May 9, 2012 and was separated from employment on October 19, 2012. Continued work was available. She was offered and accepted a position as reserve agent with Farmer's Insurance. Once she got there the first Monday following the separation she found out that she would not be an employee but would be an independent contractor. (Claimant's Exhibit A) Claimant appears to remain affiliated with Farmer's Insurance so her availability for work is at issue with respect to a claim for either full or partial unemployment benefits. Her status as an employee or independent contractor of Farmer's Insurance may also affect any determination related to her claim for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment to accept employment elsewhere.

Iowa Code section 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.

871 IAC 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.

871 IAC 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. However, her availability for work is in question since she appears to remain affiliated with Farmer's Insurance. Accordingly, benefits are allowed, provided she is otherwise eligible and the account of the employer shall not be charged.

DECISION:

The December 5, 2012 (reference 02) decision is modified in favor of the appellant. The claimant voluntarily left the employment in order to accept other employment. Benefits are allowed, provided the claimant is otherwise eligible. If the employer were based in Iowa, its account would not be liable for potential benefit charges. Since the employer is not an Iowa employer the question of whether its account may be liable for benefit charges, if any, shall be determined by the state of Illinois.

REMAND: The availability to work issue delineated in the findings of fact is remanded to the Claims Section of Iowa Workforce Development for an initial investigation and determination pursuant to Iowa Code § 96.4(3). Her status as an employee or independent contractor of Farmer's Insurance may also affect any determination related to her claim for unemployment insurance benefits.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/tll