

BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319

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STEPHANIE A MORENO

Claimant

and

QPS EMPLOYMENT GROUP INC

Employer

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HEARING NUMBER: 18BUI-06694

EMPLOYMENT APPEAL BOARD  
DECISION

**N O T I C E**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

**A REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION:** 96.5-1J, 96.3-7

**D E C I S I O N**

**UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE**

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

The Administrative Law Judge's findings of fact are adopted by the Board as its own. In addition the Board makes the following findings.

The reason the Claimant did not request a reassignment, and thereby quit working for QPS, was that she had been offered a job with Aspen Dental. After quitting she did work that job. She subsequently experienced a period of unemployment and filed an initial claim for benefits during the week starting on May 13, 2018.

**REASONING AND CONCLUSIONS OF LAW:**

This case involves a voluntary quit. Iowa Code Section 96.5(1) states:

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.

As cited by the Administrative Law Judge the Code deems a failure to report and request reassignment to be a quit. But even where a claimant quits without good cause attributable to the employer the claimant may nevertheless collect benefits under certain circumstances. One of these is where the quit is for the purpose of accepting other employment. On this issue the Code provides:

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 Code §96.5(1)(a). Here the Claimant did not request reassignment because she was planning on the Aspen Dental job. She did work that job. We think this satisfies the requirements of the statute, and benefits are allowed.

Finally, in cases of quitting for different employment “[b]enefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund.” Iowa Code §95.5(1)(a). The upshot is that QPS will not be charged for any benefits that we allow today. Since QPS was the employer whom the Claimant quit in order to take another job under the law **QPS’ account may not be charged** with benefits paid to the Claimant. Iowa Code §96.5(1)(a); 871 IAC 23.43(5)(no charge to prior employer when quit for other or better job).

#### **DECISION:**

The administrative law judge’s decision dated July 10, 2018 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was not separated from employment in a manner that would disqualify the Claimant from benefits. Accordingly, the Claimant is allowed benefits **provided** the Claimant is otherwise eligible. Any overpayment which may have been entered against the Claimant as a result of the Administrative Law Judge’s decision in this case is vacated and set aside.

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Kim D. Schmett

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James M. Strohman