

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMICA S OFFUTT
Claimant

APPEAL NO. 15A-UI-12524-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EMPLOYER SOLUTIONS STAFFING GRP
Employer

OC: 09/13/15
Claimant: Appellant (4/R)

Iowa Code Section 96.5(1) – Voluntary Quit
871 IAC 24.27 – Voluntary Quit of Part-time Employment

STATEMENT OF THE CASE:

Ammica Offutt filed a timely appeal from the November 6, 2015, reference 03, decision that denied benefits effective September 13, 2015, based on an Agency conclusion that she was on a leave of absence, was voluntarily unemployed and was not available for work. After due notice was issued, a hearing was held on December 2, 2015. Ms. Offutt participated. Sibley Mattson represented the employer and presented additional testimony through Renee Pile and Payton Brass. The hearing in this matter was consolidated with the hearing in appeal number 15A-UI-12525-JTT. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant. The administrative law judge took official notice of the October 2, 2015, reference 02, decision regarding the claimant's August 3, 2015 separation from Iowa Orthopaedic Center, P.C.

ISSUE:

Whether Ms. Offutt separated from Employer Solutions Staffing Group for a reason that disqualifies her for benefits or that relieves that employer's account of liability for benefits paid to her.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Employer Solutions Staffing Group is a staffing agency. Ammica Offutt commenced part-time employment with Employer Solutions Staffing Group on August 4, 2015. Ms. Offutt last performed work as employee of Employer Solutions Staffing Group on September 9, 2015. On May 1, 2015, Ms. Offutt gave birth to a premature baby. Ms. Offutt ceased performing work for Employer Solutions Staffing Group because she needed to stay home and care for her medically fragile baby. Ms. Offutt lost her ability to secure child care due to the baby's medically fragile status. A doctor advised Ms. Offutt that she needed to continue to closely monitor the baby, which meant that Ms. Offutt was no longer able to maintain employment. Ms. Offutt did not request a leave of absence from Employer Solutions Staffing Group and the staffing agency did not approve a leave of absence. As of the December 2, 2015 appeal hearing, Ms. Offutt continued to be unavailable for work due to the need to care for her medically fragile infant.

Immediately before becoming a part-time employee of Employer Solutions Staffing Group, Ms. Offutt was employed full time by Iowa Orthopaedic Center, P.C. Ms. Offutt could not maintain her full-time employment at Iowa Orthopaedic Center due to her child's medical needs and went to her supervisor at Iowa Orthopaedic Center, Renee Pile, to give notice of her voluntary quit. Ms. Pile suggested to Ms. Offutt that she became a part-time employee of Employer Solutions Staffing Group and continue to perform part-time work for Iowa Orthopaedic Center as an employee of Employer Solutions Staffing Group. Ms. Offutt went along with the suggestion. On August 3, 2015, Ms. Offutt met briefly with Payton Brass, a staffing manager and recruiter for Employer Solutions Staffing Group for the purpose of completing documentation to begin the new employment. Ms. Brass advised Ms. Offutt that while the staffing agency would be responsible for paying her, the supervisors at Iowa Orthopaedic Center would continue as Ms. Offutt's immediate supervisors. When Ms. Offutt decided in September 2015 that she could not continue to perform work even in a part-time status, she notified David Perrin, Front Desk Supervisor, at Iowa Orthopaedic Center of her decision. Ms. Offutt did not notify Employer Solutions Staffing Group. Employer Solutions Staffing Group learned of Ms. Offutt's separation from its company at the end of September 2015, when Ms. Offutt had gone multiple weeks without generating work hours to be included the staffing agency's payroll. Ms. Offutt had not requested a leave of absence from the staffing agency and the staffing agency had not approved a leave of absence.

Ms. Offutt established a claim for unemployment insurance benefits that was effective September 13, 2015. Ms. Offutt's base period for purposes of the claim consists of the second, third and fourth quarters of 2014 and the first quarter of 2015. Employers Solutions Staffing Group is not a base period employer for purposes of the claim. Iowa Orthopaedic Center is a base period employer for purposes of the claim. On October 2, 2015, a Workforce Development claims deputy entered a reference 02 decision that allowed benefits to Ms. Offutt provided she was otherwise eligible, and that relieved Iowa Orthopaedic Center of liability for benefits paid to Ms. Offutt, based on an Agency conclusion that Ms. Offutt had voluntarily quit Iowa Orthopaedic Center for the sole purpose of accepting other employment and performed work for the new employer. The decision transferred Iowa Orthopaedic Center's liability for benefits to the unemployment insurance compensation fund (Iowa Workforce Development). Neither Ms. Offutt nor Iowa Orthopaedic Center appealed from the October 2, 2015, reference 02, decision and it became a final agency decision adjudicating the August 3, 2015 separation. Ms. Offutt received \$2,548.00 in benefits for the seven weeks between September 13, 2015 and October 31, 2015.

REASONING AND CONCLUSIONS OF LAW:

Like the employment arrangement, the analysis of Ms. Offutt's eligibility involves some twists and turns that the administrative law judge will attempt to set forth below.

Iowa Admin. Code r. 871-24.23(10) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

Iowa Admin. Code r. 871-24.22(2)(1)(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

Iowa Code § 96.5(1)c 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:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times her weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

The evidence in the record establishes that Ms. Offutt has not been on a leave of absence from Employer's Solutions Staffing Group at any point since she established her claim for benefits. She did not request a leave of absence from the new employer and the new employer did not approve a leave of absence. The evidence establishes instead that Ms. Offutt voluntarily quit the part-time employment without good cause attributable to Employer Solutions Staffing Group effective September 9, 2015. Accordingly, that employer will not be charged for benefits paid to Ms. Offutt. The evidence further establishes that Ms. Offutt quit the employment for the sole purpose of caring for her medically fragile infant. As of the December 2, 2015 appeal hearing, Ms. Offutt's baby had not sufficiently recovered for Ms. Offutt to return to work and Ms. Offutt had not returned to the staffing agency to offer her services. Due to the part-time nature of the quit, Ms. Offutt would not be eligible for benefits *based on wages earned from the part-time employment with Employer Solutions Staffing Group* until she has worked in and been paid wages equal to 10 times her weekly benefit amount. Ms. Offutt could also remove the disqualification by complying with the requalifying process outlined in the statute. Because the employment with Employers Solutions Staffing Group was *part-time*, and the period of employment fell after the relevant base period, the quit from Employer Solutions Staffing Group does not disqualify her for benefits based on her base period wages or base period wage credits. Ms. Offutt remains eligible for benefits, provided she meets all other eligibility requirements.

There is a remaining issue that cannot be addressed as part of this decision and that must be addressed as part of a remand to the Benefits Bureau. That is the matter of whether Ms. Offutt has been available for work within the meaning of the law since she established her claim for unemployment insurance benefits. The evidence in the record strongly suggests she had not met that requirement from the time she established the claim to the time of the December 2, 2015 appeal hearing. Because the availability issue was not set forth on the hearing notice, this matter will need to be remanded to the Benefits Bureau for entry of a decision regarding Ms. Offutt's availability for work.

DECISION:

The November 6, 2015, reference 03, decision is modified as follows. The claimant voluntarily quit part-time employment on September 9, 2015 without good cause attributable to the employer. The quit was based on the claimant's need to care for her medically fragile infant. The claimant is disqualified for benefits based on wages earned from the part-time employment until she has worked in and been paid wages equal to 10 times her weekly benefit amount. The claimant can also requalify for benefits based on the part-time employment by satisfying the alternative requalification process set forth in the statute. The part-time employer's account is relieved of charges for benefits paid to the claimant. The claimant remains eligible for benefits, provided she meets all other eligibility requirements.

This matter is remanded to the Benefits Bureau for a decision regarding the claimant's availability for work since she established her claim for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css