

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHELLE A HANSEN
Claimant

APPEAL 20A-UI-01632-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

STAPLES CONTRACT AND COMMERCIAL
Employer

OC: 01/12/20
Claimant: Appellant (4)

Iowa Code § 96.5(1)a – VQ – Other Employment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.28(5) – VQ – Other
Iowa Admin. Code r. 871-23.43(5) – Charges – Sole purpose, other/better
Iowa Admin. Code r. 871-24.22 – Able & Available – Benefits Eligibility Conditions

STATEMENT OF THE CASE:

Claimant filed an appeal from the February 17, 2020 (reference 03) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on March 11, 2020, at 8:00 a.m. Claimant participated. Employer participated through Michelle Nicks, Supervisor of Screen Print. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant's separation was a voluntary quit without good cause attributable to employer.
Whether claimant is able to and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time utility operator from February 14, 2018 until her employment with Staples Contract and Commercial ended on October 30, 2019, when claimant verbally resigned. Claimant quit her employment with Staples to accept other employment at EJI, Inc. (d/b/a Pizza Ranch). Claimant performed work for EJI, Inc. There was continuing work available to claimant at Staples. Claimant's employment with Staples was not in jeopardy.

Claimant has been physically able to work since filing her original claim effective January 12, 2020. Claimant has not been sick, hospitalized, incarcerated or out of town for more than two days since January 12, 2020. Claimant has transportation and child care. Claimant has not been self-employed since January 12, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily quit to accept other employment. Benefits are allowed provided claimant is otherwise eligible. Employer's account shall not be charged.

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.

Iowa Admin. Code r. 871-24.28(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. The employment does not have to be covered employment and does not include self-employment.

Iowa Admin. Code r. 871-23.43(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 employer and would, standing alone, disqualify claimant from receiving benefits, claimant did quit in order to accept other employment and performed services for the subsequent employer. Therefore, benefits are allowed and employer's account shall not be charged.

The next issue to be determined is whether claimant is able to and available for work. For the reasons that follow, the administrative law judge concludes claimant is able to and available for work since filing her original claim effective January 12, 2020. Benefits are allowed provided claimant is otherwise eligible.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1), (2), in pertinent part, 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.

(1) *Able to work.* An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

(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.

Claimant has been able to and available for work since filing her original claim effective January 12, 2020. Benefits are allowed provided claimant is otherwise eligible.

DECISION:

The February 17, 2020 (reference 03) unemployment insurance decision is modified in favor of appellant. Claimant voluntarily quit in order to accept other employment and is able to and available for work. Benefits are allowed provided claimant is otherwise eligible. Employer's account (account number 293365-000) shall not be charged.

Adrienne C. Williamson
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Decision Dated and Mailed

acw/rvs