

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY K WENDEL-FRANK
Claimant

APPEAL NO: 15A-UI-00239-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 12/07/14

Claimant: Respondent (3)

Section 96.5-1 – Voluntary Leaving
871 IAC 24.27 – Voluntary Quit of Part-time Job

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed a representative's December 30, 2014 (reference 02) decision that concluded Kimberly K. Wendel-Frank (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 2, 2015. A review of the Appeals Bureau's conference call system indicates that the claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Michelle Place appeared on the employer's behalf and presented testimony from one other witness, Alisha Weber, on the issue of participation in the fact-finding interview. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer, and if not, is the separation disqualifying?

OUTCOME:

Modified. Benefits allowed in current benefit year. Employer's account exempt from charge.

FINDINGS OF FACT:

After a prior period of employment with the employer, the claimant most recently started working for the employer on September 6, 2014. She worked part time (30 – 32 hours per week) as a donut maker and lunch cook. Her last day of work was Thursday, November 27, 2014. She voluntarily quit that day by refusing to return to work to discuss an incident that had occurred while working that day involving alleged usage of profanity toward and "flipping off" another employee. When the claimant refused to return to work that day, the store manager, Place, told the claimant that she should take the weekend off and come in on Monday, December 1 to discuss the issue and that the employer would make sure that the claimant was able to make up the hours. However, the claimant told Place that she was quitting.

Agency records indicate that another representative's decision was also issued on December 30, 2014 (reference 04) regarding the first period of employment which found that the claimant had re-qualified since that initial separation and that the employer was also not subject to charge on the wages paid in that employment.

The claimant filed a new claim for unemployment insurance benefits with an effective date of December 7, 2014. The base period was established as being from the third quarter of 2013 through the second quarter of 2014. The claimant's highest quarter of earnings during this base period was the fourth quarter 2013; which did include wages from the employer but not from the second period of employment. Her weekly benefit amount was determined to be \$275; based on the wages in the fourth quarter of 2013.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. Rule 871 IAC 24.25 provides that, 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 from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. Rule 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a coworker is not good cause. Rule 871 IAC 24.25(21), (6). Quitting rather than face disciplinary action is not good cause. Rule 871 IAC 24.25(28). The claimant has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. *O'Brien v. Employment Appeal Board*, 494 N.W.2d 660 (Iowa 1993); *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (FL App. 1973). Rather, her complaints do not surpass the ordinary tribulations of the workplace. The claimant has not satisfied her burden. Benefits would be denied on the second period of employment.

Rule 871 IAC 24.27 provides in pertinent part:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not re-qualified 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. 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.

The claimant voluntarily quit employment without good cause attributable to the employer. The job, however, was part time and the claimant has sufficient base-period wages which do not include wages paid by the employer in the second period of employment to qualify to receive unemployment insurance benefits in the current benefit year. The employer's account will not be subject to charge for benefits paid to the claimant.

DECISION:

The representative's December 30, 2014 (reference 02) decision is modified in favor of the employer. The claimant voluntarily left her employment without good cause attributable to the employer; but because the employment was part-time and there are sufficient qualifying base-period wage credits, the claimant is not disqualified during the current benefit year. The employer's account is not subject to charge.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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