

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ABILENE LOPEZ
Claimant

APPEAL NO. 24A-UI-07408-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

COSTCO WHOLESALE CORPORATION
Employer

OC: 06/09/24
Claimant: Appellant (4R)

Iowa Code § 96.5(1) – Voluntary Quit

Iowa Code § 96.5(12) & Iowa Admin. Code R. 87124.27 – Part-time Supplemental Employment

STATEMENT OF THE CASE:

On August 19, 2024, Abilene Lopez (claimant) filed a timely appeal from the August 7, 2024 (reference 04) decision that disqualified her for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that Ms. Lopez voluntarily quit on July 17, 2024 without good cause attributable to the employer. After due notice was issued, a hearing was held on September 9, 2024. Ms. Lopez participated. Tyler O'Dwyer represented the employer. Exhibit A was received into evidence. The administrative law judge took official notice of the following IWD administrative records: DBRO, WAGEA and the July 25, 2024 West Liberty Telephone Company (employer number 003905) notice of non-protest.

ISSUES:

Whether the claimant voluntarily quit without good cause attributable to the employer.
Whether the employment with Costco was part-time, supplemental.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Abilene Lopez (claimant) was employed by Costco Wholesale Corporation as a part-time Cashier Assistant from May 9, 2024 until July 17, 2024, when she voluntarily quit. During the brief employment, Ms. Lopez's work schedule at Costco was Tuesday and Wednesday 5:00 p.m. to 10:00 p.m. and Saturday and Sunday noon to 8:30 p.m. Ms. Lopez last performed work for the employer on July 17, 2024. At the time Ms. Lopez separated from Costco, that employer continued to have work available for Ms. Lopez.

On July 17, 2024, Ms. Lopez notified the employer that she was quitting the employment effective that day due to her acceptance of a full-time employment that offered Monday through Friday work days. Ms. Lopez had been offered an opportunity to job shadow with a prospective full-time employer, but had not yet been offered and had not yet accepted new employment. The job-shadowing arrangement did not lead to an offer of employment.

While Ms. Lopez did not mention to Costco that she was leaving due to a lack of childcare, Ms. Lopez's decision to leave the Costco employment was based at least in part on a lack of childcare. Until July 19, 2024, Ms. Lopez's household included Ms. Lopez, her husband, and the couple's two children, ages 14 and eight. Ms. Lopez's quit from the part-time employment with Costco coincided with the Ms. Lopez's separation from her husband, who had previously provided childcare when Ms. Lopez was working. Ms. Lopez's husband left for Mexico on July 19, 2024.

At the time Ms. Lopez commenced the part-time employment with Costco, she was in a full-time employment with West Liberty Telephone Company. Ms. Lopez continued in the full-time employment until June 14, 2014, at which time the full-time employer laid off Ms. Lopez. The full-time employer subsequently notified Iowa Workforce Development that it was not protesting Ms. Lopez's claim for unemployment insurance benefits. West Liberty Telephone Company is the sole base period employer in connection with the claim that took effect June 9, 2024.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

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.

When a claimant voluntarily quits employment due to a lack of childcare, the quit is presumed to be without good cause attributable to the employer. See Iowa Admin. Code rule 87124.25(17).

Iowa Code section 96.5(12) provides:

12. Supplemental part-time employment. If the department finds that an individual is disqualified for benefits under subsection 1 or 2 based on the nature of the individual's separation from supplemental part-time employment, all wages paid by the supplemental part-time employer to that individual in any quarter which are chargeable following a disqualifying separation under subsection 1 or 2 shall not be considered wages credited to the individual until such time as the individual meets the conditions of requalification as provided for in this chapter, or until the period of disqualification provided for in this chapter has elapsed.

Iowa Administrative Code rule 87124.27 provides:

871—24.27(96) Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified 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. The individual and the part-time employer which was voluntarily quit shall be notified on Form 65-5323, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and 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 evidence establishes that Ms. Lopez voluntarily quit part-time, supplemental employment with Costco effective July 17, 2024 due to a lack of child care. The quit was without good cause attributable to the employer. Because the quit was from part-time supplemental employment, Ms. Lopez remains eligible for benefits based on wages from the full-time base period employment with West Liberty Telephone Company (employer account number 003905), provided she is otherwise eligible. The employer account for Costco will not be charged for benefits. Instead the wage credits from the part-time supplemental Costco employment (May 9, 2024 through July 17, 2024) will be transferred to the IWD balancing account. The wages from the part-time supplemental employment will not be available for inclusion in a future unemployment insurance claim until Ms. Lopez has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. Ms. Lopez must meet all other eligibility requirements.

DECISION:

The August 7, 2024 (reference 04) decision is MODIFIED in favor of the claimant/appellant as follows. The claimant voluntarily quit part-time, supplemental employment with Costco effective July 17, 2024 without good cause attributable to the employer. The claimant is eligible for benefits based on wages from the full-time base period employment with West Liberty Telephone Company (employer account number 003905), provided she is otherwise eligible. The employer account for Costco will not be charged for benefits. Instead the wage credits based on the part-time supplemental Costco employment (May 9, 2024 through July 17, 2024) shall be transferred to the IWD balancing account. The wages from the part-time supplemental employment will not be available for inclusion in a future unemployment insurance claim until the claimant has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements.

REMAND:

In light of the claimant's testimony regarding a loss of child care effective July 19, 2024, this matter is REMANDED to Iowa Workforce Development Benefits Bureau for determination of whether the claimant has been available for work within the meaning of the law during the period beginning July 21, 2024.

A rectangular box containing a handwritten signature in black ink that reads "James E. Timberland".

James E. Timberland
Administrative Law Judge

September 12, 2024
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.