

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AUGUSTINA N SMITH
Claimant

PROFESSIONAL BUILDING SERVICES OF
Employer

APPEAL 15A-UI-13129-JP-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 10/18/15
Claimant: Appellant (4-R)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.27 – Voluntary Quitting – Part-time Employment

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 19, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 16, 2015. Claimant participated. Employer participated through administrative assistant/human resources, Meredith Schiffke.

ISSUES:

Did claimant voluntarily quit the part-time employment with good cause attributable to employer?

Has the claimant requalified or is she otherwise monetarily eligible for benefits?

Is the employer liable for benefit charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time as a custodian from May 22, 2014, and was separated from employment on September 1, 2015, when she quit.

Claimant quit because on September 1, 2015, she refused to do another co-worker's job while that co-worker was on a smoke break. Claimant told the night supervisor that she refused to do the co-worker's job while the co-worker was outside smoking. The night supervisor told her to do it, but claimant just quit. Claimant felt she was being treated unfairly.

Claimant also worked for Seventh Avenue.

The administrative record reflects that claimant has not requalified for benefits and had other base period wages (Seventh Avenue Inc., employer account number 208945-000) but the record is unclear as to whether he is otherwise monetarily eligible.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer, and has not requalified but appears to be otherwise monetarily eligible.

Iowa Code § 96.5(1) 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.

Iowa Admin. Code r. 871-24.25(22) and (27) provide:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(22) The claimant left because of a personality conflict with the supervisor.

(27) The claimant left rather than perform the assigned work as instructed.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

On September 1, 2015, claimant quit because she did not want to do the tasks assigned by her supervisor. Claimant testified that she felt mistreated because she was being asked to do the work her co-worker was supposed to do. Claimant did not want to do the work, because the co-worker would take smoke breaks, and claimant would not take any breaks. Claimant's decision to quit because she did not agree with the supervisor about various issues was not for a good-cause reason attributable to the employer. While claimant's leaving the employment may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law.

Iowa Code § 96.5(1)g 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:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.27 provides:

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 the Form 65-5323 or 60-0186, 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.

Inasmuch as claimant quit without good cause attributable to the employer, the separation is disqualifying. However, the claimant has not requalified for benefits since the separation but appears to be otherwise monetarily eligible according to base period wages. Thus, she may be eligible for benefits based upon those other wages.

DECISION:

The November 19, 2015, (reference 01), unemployment insurance decision is modified in favor of the appellant. The claimant voluntarily left the employment without good cause attributable to the employer and has not requalified for benefits but appears to be otherwise monetarily eligible. Benefits are allowed, provided she is otherwise eligible. The account of this employer (218725-000) shall not be charged.

REMAND: The claimant's monetary eligibility after the quit of this part-time employment as delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/css