

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENNIS D CHINBERG
Claimant

APPEAL NO. 07A-UI-00124-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALBRECHT TRUCKING INC
Employer

**OC: 10/22/06 R: 02
Claimant: Appellant (4)**

Section 96.5-1 - Voluntary Quit for Other Employment

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated December 20, 2006, reference 03, that concluded the claimant voluntarily quit employment without good cause. A telephone hearing was held on January 22, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Ed Gray. Vicki Albrecht participated in the hearing on behalf of the employer. Exhibit One was admitted into evidence at the hearing.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant was hired to work full time for the employer as a dump truck driver and worked in that capacity from March 27, 2006, to October 20, 2006. The employer's work rules state that an employee on temporary layoff is required to be available for work, and if the employee is not available (does not answer the company issued and funded cell phone) or fails to report to work when called, his unemployment benefits would be terminated.

The employer placed the claimant on temporary layoff after October 20, 2006, but he was subject to being called back to work. The claimant filed a new claim for unemployment insurance benefits with an effective date of October 22, 2006.

The claimant responded to calls from the employer and worked part-time afterward during the week ending of October 28, November 4, and November 11. He reported his wages and received partial unemployment benefits for those weeks.

On November 24, the claimant brought in his company-issued cell phone and credit card. He did this because he accepted employment as a dump truck driver with a former employer, Dan Raitt Inc. The claimant believed that if the employer needed to get a hold of him regarding future work, they had his personal phone number. The employer reasonably believed that the claimant had voluntarily left his employment based on the employer's work rule and the claimant's returning his company cell phone.

The claimant started work for Dan Raitt Inc. on November 27, 2006. He has continued to file weekly claims and has reported his earnings for each week.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer.

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.

The claimant left his employment with the employer to accept other employment. This is shown by the fact that he turned in his company cell phone and credit card and started employment the next week. He has continued to work in that other employment. The claimant is eligible to receive unemployment insurance benefits. The employer's account is exempt from charge for benefits paid to the claimant after November 24, 2006. The employer remains liable for benefits paid prior to November 24, 2006.

On a related matter, the employer has work rules that state that an employee "may be allowed to sign up for unemployment," "you will not be eligible for unemployment benefits," and "your unemployment benefits will be terminated immediately." The parties are advised that the employer does not determine whether or not a person can apply for unemployment insurance benefits or decide, if that person has applied, whether he or she is eligible to receive benefits. Those decisions are made by the agency given that responsibility under the unemployment insurance law.

DECISION:

The unemployment insurance decision dated December 20, 2006, reference 03, is modified in favor of the claimant. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The employer's account is chargeable for benefits paid prior to November 24, 2006, but not afterward.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw