

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FRANCIS E WANKEN
Claimant

APPEAL NO: 11A-UI-00725-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TLH CLEANING LLC
Employer

OC: 11/28/10
Claimant: Respondent (2/R)

Iowa Code § 96.5(1) – Voluntary Quit
871 IAC 24.23(10) – Requested Voluntary Unemployment

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's January 7, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant's employment separation was for nondisqualifying reasons. The claimant participated in the hearing. Ted Hammes, the owner, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is not eligible to receive benefits.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in July 2008. The employer understood the claimant's doctor would not allow him to remove snow during the winter months. As a result of this understanding and the fact the claimant signed a paper that he did not want to work the winter months, the claimant works seven months or May 1 through December 1. The employer hires a part-time person to work the winter months that the claimant does not want to work. If the claimant worked the winter months he would not be unemployed December through April.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(1), (2)a.

In this case, the claimant's employment has not ended, he just does not work December through April. Since the employer has work for him to do these five months and it is the claimant's choice that he does not work, the employer did not temporarily lay him off from work. Basically, the claimant has requested time off from December through April because he does not want to

drive during the winter months and his doctor may not want him to do snow removal. For unemployment insurance purposes, the claimant has essentially requested a leave of absence from December through April. When a claimant requests and is granted a leave of absence or time off, this amounts to voluntary unemployment and a claimant is not eligible to receive benefits for this period. 871 IAC 24.23(10). Therefore, as of November 28, 2010, the claimant is not eligible to receive benefits.

Since the claimant has received benefits since November 28, 2010, an issue of overpayment will be remanded to the Claims Section to determine.

DECISION:

The representative's January 7, 2011 determination (reference 01) is reversed. The claimant is not eligible to receive benefits as of November 28, 2010, because he requested time off from December through April, which amounts to voluntary unemployment. An issue of overpayment is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs