

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DUSTIN S HAMELL**  
Claimant

**APPEAL NO. 16A-UI-11878-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CITY OF NEWTON**  
Employer

**OC: 10/09/16**  
**Claimant: Appellant (1)**

Iowa Code Section 96.5(1) – Voluntary Quit  
Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Dustin Hamell filed a timely appeal from the October 24, 2016, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on an agency conclusion that Mr. Hamell had voluntarily quit on October 7, 2016 for personal reasons and without good cause attributable to the employer. After due notice was issued, a hearing was held on November 17, 2016. Mr. Hamell participated. Katrina Davis, Human Resources Specialist, represented the employer. Exhibit A was received into evidence. The administrative law judge took official notice of the following agency administrative records: KCCO and DBRO.

**ISSUES:**

Whether the claimant's voluntary quit was for good cause attributable to the employer.

Whether the claimant was able to work and available for work during the five-week period of October 9, 2016 through November 12, 2016.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Dustin Hamell was employed by the City of Newton as a full-time police officer from 2012 until October 7, 2016 when he voluntarily quit the employment. Mr. Hamell last performed work for the employer at the end of August 2016. On August 31, 2016, Mr. Hamell was operating a private vehicle while off-duty when he was stopped by a law enforcement officer for suspicion of operating a motor vehicle while intoxicated (OWI). The stop led to Mr. Hamell being charged with OWI and being served notice that his driving privileges would be revoked. In response to the OWI charge, the employer placed Mr. Hamell on paid administrative leave pending the outcome of an internal investigation of his conduct. As of October 7, 2016, the internal investigation was still pending and the employer had not given notice to Mr. Hamell of an intention to end his employment. As of October 7, 2016, the OWI charge was still pending. As of October 7, 2016, Mr. Hamell's license revocation had not gone into effect because Mr. Hamell had filed an appeal from the license revocation.

On October 7, Mr. Hamell signed a City of Newton resignation form and delivered the form to the Chief of Police. Mr. Hamell indicated on the form that his resignation was effective immediately. Mr. Hamell did not write a reason for the resignation on the form. Mr. Hamell told the Police Chief that he was leaving to get help with his alcohol issues. Mr. Hamell's decision to sever the employment relationship was not based on advice from a licensed medical professional or mental health professional.

Mr. Hamell established a claim for benefits that was effective October 9, 2016. At the time Mr. Hamell established the claim, the revocation of his driving privileges had not yet gone into effect because his appeal of the revocation was still pending. On or about October 15, 2016, Mr. Hamell underwent a substance abuse evaluation and was referred to extensive outpatient treatment. The evaluator did not make a recommendation regarding whether Mr. Hamell should be employed while he participates in intensive outpatient substance abuse counseling. Though a treatment facility existed in Newton, Mr. Hamell elected to participate in treatment outside of Newton. Mr. Hamell had to wait for an opening in the intensive outpatient program. On November 15, 2016, Mr. Hamell began his intensive outpatient treatment program in the Des Moines metropolitan area. The treatment is scheduled to last several weeks, to take place two times per week from 5:00 to 6:00 p.m., and to include both group and individual therapy sessions.

Mr. Hamell has withdrawn his appeal of the license revocation. The six-month license revocation will take effective November 28, 2016. Mr. Hamell's mother works from her home in Altoona and has agreed to assist Mr. Hamell with getting to and from a new employment.

During the five weeks during which the unemployment insurance claim has been in effect, Mr. Hamell has sought new employment. Mr. Hamell is a graduate of the Iowa Law Enforcement Academy and has completed one year of college studies. During the week that ended October 15, 2016, Mr. Hamell contacted Southridge Mall in Des Moines regarding prospective employment as a mall security officer. During that same week, Mr. Hamell contacted Wells Fargo regarding prospective employment as a security officer. During the week that ended October 22, 2016, Mr. Hamell again contacted Southridge Mall regarding prospective employment. Mr. Hamell also contacted Jordan Creek Mall about prospective employment as a mall security officer. Mr. Hamell also contacted the Polk County Jail regarding potential employment as a detention officer. During the week that ended October 29, 2016, Mr. Hamell contacted Wells Fargo about two openings. During the week that ended November 5, 2016, Mr. Hamell contacted the Indianola Hy-Vee and the Indianola Theisens regarding potential employment. During the week that ended November 12, 2016, Mr. Hamell contacted Prairie Meadows Race Track and Casino, Merle Hay Mall and Wells Fargo regarding prospective employment.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 96.5-1-d 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:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for

absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Workforce Development rule 817 IAC 24.26(6) provides as follows:

Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

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.

Mr. Hamell asserts a health-related basis for his decision to sever the employment relationship on October 7, 2016. However, Mr. Hamell's decision to leave the employment was not based on advice from a licensed medical professional or mental health professional. In addition, the evidence fails to establish a health condition that made it necessary for Mr. Hamell to leave the employment. Mr. Hamell's voluntary quit occurred at a point when the City of Newton internal investigation was still pending and the employer had not given notice that discharge from the employment was imminent. The weight of the evidence establishes a voluntary quit for personal reasons and without good cause attributable to the employer. Accordingly, Mr. Hamell is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Hamell must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

Iowa Code § 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1)a, and (2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The weight of the evidence establishes that Mr. Hamell has been physically and mentally able to perform full-time work and has been available for full-time work during the period of October 9, 2016 through November 12, 2016. Mr. Hamell's intensive outpatient treatment schedule did not impact his availability during that period. Mr. Hamell's impending license revocation did not affect his availability for work during that period. Mr. Hamell had made a sufficient number of job contacts per week during the five-week period of October 9, 2016 through November 12, 2016 to satisfy the requirement that he actively and earnestly seek new employment.

**DECISION:**

The October 24, 2016, reference 01, decision is affirmed. The claimant voluntarily quit the employment on October 7, 2016 without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged. The claimant satisfied the able and available requirements during the five-week period of October 9, 2016 through November 12, 2016.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs