

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAMIEN M MOST
Claimant

APPEAL NO. 07A-UI-10077-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 09/09/07 R: 01
Claimant: Respondent (4)

Section 96.5-1 – Voluntary Quit
Section 96.5-3-a – Refusal of Suitable Work

STATEMENT OF THE CASE:

Advance Services (employer) appealed a representative's October 19, 2007 decision (reference 03) that concluded Damien Most (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 15, 2007. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Susan Gonseth, Branch Manager.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer and whether he refused an offer of suitable work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on August 18, 2005 as a temporary worker. On August 30, 2006, he was assigned to work at Farley's and Sather's as a full-time general production worker on the 11:00 p.m.-to-7:30 a.m. shift. On November 16, 2006, the claimant did not give notice to the employer that he would not be appearing for work. The employer telephoned the claimant. The claimant notified the employer that he was quitting because he did not want to work overtime hours. On November 17, 2006, the employer offered the claimant work at Sun Best Foods. The claimant refused the assignment. The employer did not hear from the claimant again. On March 5, 2007, the employer attempted to telephone the claimant with an offer of work, but the claimant's telephone line had been disconnected. This was the last attempted contact with the claimant.

The claimant filed for unemployment insurance benefits with an original claim date of September 9, 2007.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge finds the claimant voluntarily quit work without good cause attributable to the employer.

Iowa Code section 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.

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). The claimant's intention to voluntarily leave work was evidenced by his actions. He stopped appearing for work and quit work. There was no evidence presented at the hearing of good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

For the reasons that follow, the administrative law judge concludes the claimant did not refuse an offer of suitable work on September 9, 2007.

871 IAC 24.24(1)a provides:

(1) Bona fide offer of work.

- a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

The employer did not offer the claimant work on September 9, 2007. No offer of work was made to the claimant and, therefore, he is qualified to receive benefits, provided he is otherwise eligible.

DECISION:

The representative's October 19, 2007 decision (reference 03) is modified in favor of the appellant. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant is qualified to receive benefits should he become eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw