

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARRELL L SCOTT
Claimant

APPEAL NO: 08A-UI-00981-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES
Employer

OC: 12/23/07 R: 04
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Temp Associates (employer) appealed a representative's January 22, 2008 decision (reference 01) that concluded Darrell L. Scott (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 12, 2008. The claimant participated in the hearing. Jan Windsor appeared on the employer's behalf. During the hearing, Claimant's Exhibit A was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant began his first and to date only assignment with the employer on July 24, 2007. He worked full time as a laborer with the employer's insulation contractor business client. His last day on the assignment was December 20, 2007.

In early December 2007 the claimant received word that his mother, who lived in California and who was suffering from dementia, had suffered a serious episode and that her doctor was recommending that someone needed to be with her on a permanent basis. The claimant is the oldest child, but there were other children, including a daughter who also lived in California. The children conferred, and while there was some belief that it would be most logical for the daughter who lived in California and who was not working to move in with her mother, the daughter was resistant. The claimant then decided that if his sister was unwilling to make the commitment to move in with and be there for their mother, the duty most logically fell to him. Between December 10 and December 13 he advised both the business client and the employer of the fact that he was going to need to end the assignment in order to move to California to care for his mother, and that December 20 would be his last day on the assignment. When the

claimant spoke with the business client's representative, that person indicated that there should not be a problem as it was possible that the project would start downsizing in the middle of January.

On the morning of December 17 the claimant contacted the employer to indicate he would not be at work that day as he was preparing for the moving van which was scheduled to come for his items that evening. However, about mid-afternoon the claimant received a call from his sister in California indicating that she would go ahead and move in with and care for their mother, and that he therefore did not need to move to California. As a result, the claimant cancelled his arrangements for the moving van. However, he did not speak with the employer or the business client about the possibility of cancelling his intended quit as of December 20. Rather, he proceeded to work December 19 and December 20, and left the assignment as of the end of work on December 20.

The claimant did not recontact the employer and advise it of his change in availability status until December 28 when he indicated that he would not be moving for at least the near future and that he wanted work. The job with the insulation contractor business client was no longer available at that time as the position had been otherwise filled by the business client, and no further work was available at that time with the employer. As to the work that might have been available past the middle of January, as of December 20 there had been seven employees of the employer working for the business client. As of the date of the hearing, five of those employees continued to work on the assignment; the other two had been the claimant and another employee who had left of their own volition. The employer had no indication from the business client that had the two employees not left of their own accord there would not have been work available for them as well at least through the date of the hearing.

The claimant established a claim for unemployment insurance benefits effective December 23, 2007. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$2,156.00.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer.

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.

871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Leaving for the “necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill” can be a good cause for a quit, although eligibility would only exist if after the family member no longer needed assistance “the individual immediately returned to and offered the individual's services to the individual's employer” but no work was available. Iowa Code § 96.5-1-c. While that may have been the intended purpose of the proposed quit as originally announced prior to December 17, as of December 17 the claimant was no longer going to be leaving in order to care for his mother. However, he regardless proceeded to leave the assignment, without giving either the employer or the business client an opportunity to consider allowing him to rescind his resignation so that he could have stayed in the assignment after December 20. Rather, for no reason the claimant was able to explain, he waited until December 28 to advise the employer he had not and was not going to be moving.

Regardless of sympathy for the situation the claimant found himself in prior to December 17, the administrative law judge does not have discretion to rule contrary to the law. Lenning v. Iowa Dept. of Transp., 368 N.W.2d 98 (Iowa 1985). When his good cause reason for leaving dissolved, he proceeded to complete his quit but for no cause recognized as attributable to the employer. The claimant has not satisfied his burden. Benefits are denied.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's January 22, 2008 decision (reference 01) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of

December 20, 2007, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$2,156.00.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs