

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GABRIEL R MOCK
Claimant

APPEAL NO: 11A-UI-01689-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMPLETE PAYROLL SERVICE INC
Employer

OC: 12/12/10

Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Gabriel R. Mock (claimant) appealed a representative's February 1, 2011 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits in conjunction with his employment with Complete Payroll Service, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 11, 2011. This appeal was consolidated for hearing with one related appeal, 11A-UI-01690-DT. The claimant participated in the hearing. Anthony Gross appeared on the employer's behalf. 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.

ISSUES:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant's only base period wages are with the employer working as an on-call stagehand. He started working with the employer in about March 2003, working about two times per week. He was normally called for work by receiving a call from his union's business agent, call steward, or other union representative instructing him as to when he was scheduled for work. He last worked an event for the employer on or about October 10, 2010. After October 10 the claimant was in jail for the remainder of the month, and was not available to work at all.

As of November 3 he was placed on work release status, but he needed a week's notice in order to be released for the work; work with the employer is not usually scheduled with a week's notice. As of December 1, 2010 through at least the time of the hearing, the claimant was placed on house arrest, and was still on work release status.

The claimant attended a union meeting on March 8 in which he was informed that he was no longer a member.

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.

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. However, an employee is also deemed to have left without good cause if the employee is absent from work due to becoming incarcerated. 871 IAC 24.25(16). Benefits are denied.

Further, even if there was not found to have been a disqualifying separation from employment, the claimant would not be eligible to receive unemployment insurance benefits. With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3.

First, persons in jail or participating in a "work release" program are not considered to be "able and available" for work as required by the statute. 871 IAC 22.2(g); 871 IAC 24.23(12). More importantly, however, the claimant's on-call employment does not support eligibility for unemployment insurance benefits.

871 IAC 24.22(2)i(3) 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.

(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....

i. On-call workers.

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code § 96.19(9)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

The claimant is not able and available for work as necessary to be eligible to receive unemployment insurance benefits.

DECISION:

The representative's February 1, 2011 decision (reference 03) is affirmed. Through his incarceration the claimant is deemed to have voluntarily left his employment without good cause attributable to the employer. As of October 10, 2010, 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 then otherwise eligible. The claimant is not able to work and available for work effective October 10, 2010, or in his benefit year effective December 12, 2010 based solely on on-call wage credits. Benefits are denied.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs