

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON J MARTIN
Claimant

APPEAL NO. 10A-UI-08535-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TOM WALTERS CO INC
Employer

OC: 01/10/10
Claimant: Appellant (4-R)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Jason Martin filed a timely appeal from the June 7, 2010, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on August 2, 2010. Mr. Martin participated. Chuck Lovin, President, represented the employer. The administrative law judge took official notice of the March 2, 2010, reference 02 decision that allowed benefits effective January 10, 2010, under a theory of partial unemployment, but that relieved the above employer of liability for benefits so long as the claimant continued in the employment under the same conditions. The administrative law judge took official notice of the Agency's administrative record of benefits paid to the claimant and wages reported by or for the claimant.

ISSUE:

Whether Mr. Martin separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a refuse hauling operation. Jason Martin was employed by Tom Walters Company as a refuse truck driver and dump container hauler from April 3, 2006 until July 23, 2010. In the fall of 2008, Mr. Martin transitioned from being a full-time employee to just working as needed. Mr. Martin had other full-time employment.

For the six-week period that ended April 28, 2010, Mr. Martin was filling in for another employee and worked Monday through Friday, 6:00 or 6:30 a.m. to 10:00 p.m. Though the parties called this "full-time," Mr. Martin does not appear to have been putting in full-time hours.

On or about April 28, 2010, Mr. Martin told Chuck Lovin, President, that he no longer wanted to make the run to Perry that had been part of his assigned duties. The employee for whom Mr. Martin was filling in had not yet returned to the employment. Mr. Lovin told Mr. Martin that it was his choice whether he wanted to work. Mr. Martin said okay and left. Mr. Martin did not say anything about whether he wanted Mr. Lovin to call him for more work. Mr. Lovin had been

paying Mr. Martin \$100.00 per day to perform the assigned work and was willing to continue in that arrangement. Mr. Martin voluntarily separated from the employment at that time.

In July 2010, Mr. Martin performed additional work for the employer on an as-needed basis and was paid \$100.00 per day for his work.

REASONING AND CONCLUSIONS OF LAW:

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.

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.

The weight of the evidence in the record establishes that Mr. Martin separated from the employer on April 28, 2010 rather than perform the duties as assigned. Mr. Martin's voluntary separation was without good cause attributable to the employer. The employer's account will not be charged.

The weight of the evidence indicates that the employment was actually part-time, not full time. An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times his weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

Because the employment was part-time, Mr. Martin's voluntary quit disqualifies him for unemployment insurance benefits based on the base period wage credits from Tom Walters Company until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount subsequent to his April 28, 2010 separation from the employer. Because the employer was part-time, Mr. Martin would remain eligible for unemployment insurance benefits based on base period wage credits from *other* employment, provided he meets all eligibility requirements. This matter will be remanded to the Claims Division for determination of Mr. Martin's eligibility for reduced benefits.

DECISION:

The Agency representative's June 7, 2010, reference 03, decision is modified as follows. The claimant voluntarily quit the part-time employment without good cause attributable to the employer effective April 28, 2010. Effective April 28, 2010, the claimant is disqualified for

benefits based on base period wage credits from this employment until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged. The claimant remains eligible for unemployment insurance benefits based on base period wage credits from *other* employment, provided he meets all eligibility requirements.

This matter is remanded to the Claims Division for determination of the claimant's eligibility for reduced benefits. The Claims Division should also consider whether the claimant has met the work availability requirements of Iowa Code section 96.4(3) since April 28, 2010.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs