

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICK HAMMER JR
Claimant

APPEAL NO. 09A-UI-11046-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED PARCEL SERVICE
Employer

**Original Claim: 06/28/09
Claimant: Respondent (4/R)**

Iowa Code § 96.5-1 - Voluntary Quit
871 IAC 24.27 - Voluntary Quit of Part-Time Employment

STATEMENT OF THE CASE:

United Parcel Service (employer) appealed an unemployment insurance decision dated July 24, 2009, reference 01, which held that Nick Hammer Jr. (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 18, 2009. The claimant participated in the hearing. The employer participated through Supervisor Kevin Whitehill. 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:

The issue is whether the claimant's voluntary separation from his part-time employment qualifies him to receive unemployment insurance benefits?

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 employed as a part-time package loader from May 18, 2006 through June 28, 2009, when he voluntarily quit due to child care issues. He was off work from April 13, 2009 through May 2009, due to his child's birth. The claimant said his schedule had the same start times until February 2009, when it began to fluctuate. He said that he had problems finding babysitters to accommodate the changing schedule and it even made him late for his second job a couple of times.

The employer's business is based on the volume of packages it receives on a daily basis, which is what affected the start times. The claimant said his start times changed on Sundays from 9:45 a.m. to 10:15 p.m.; on Mondays from 10:30 a.m. to 11:30 a.m.; on Tuesdays from 11:30 a.m. to 12:30 p.m.; and on Wednesdays and Thursdays from 11:15 a.m. to 12:15 p.m. However, he said the following week the start times would change back to what they had been before.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits.

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 24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

The claimant quit his employment on June 28, 2009 due to problems with child care. The law presumes it is a quit without good cause attributable to the employer when an employee leaves because of lack of childcare. 871 IAC 24.25(17). The claimant's start times did fluctuate mildly; however, the different start times is not considered to be a substantial change in the claimant's contract of hire. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988). Furthermore, an employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See Olson v. Employment Appeal Board, 460 N.W.2d 865 (Iowa Ct. App. 1990). The claimant acquiesced to the fluctuating start times by not resigning prior to the end of June 2009.

The claimant has the burden of proving that the voluntary quit was for a good reason that would not disqualify him. Iowa Code § 96.6-2. He has not met that burden and his separation from the employer herein is disqualifying.

However, an individual who quits part-time employment without good cause, yet is otherwise monetarily eligible based on wages paid by other base-period employers, shall not be disqualified for voluntarily quitting the part-time employment. Benefit payments shall not be based on wages paid by the part-time employer and charges shall not be assessed against the part-time employer's account. Once the individual has met the requalification requirements, the wages paid from the part-time employment can be used for benefit payment purposes. 871 IAC 24.27.

Based on this regulation, this matter is remanded to the Claims Section to determine whether the claimant is monetarily eligible to receive unemployment insurance benefits when the wage credits the claimant earned while working for the employer are not used in determining the claimant's monetary eligibility or his maximum weekly benefit amount.

DECISION:

The unemployment insurance decision dated July 24, 2009, reference 01, is modified in favor of the appellant. The claimant voluntarily quit his part-time employment for disqualifying reasons. Therefore, the employer's account will not be charged. This matter is remanded to the Claims Section to determine whether the claimant is monetarily eligible to receive unemployment insurance benefits and to determine what his maximum weekly benefit amount is when the wage credits the claimant earned from the employer are not taken into consideration to determine these two issues.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw