

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEROD D JENSEN
Claimant

APPEAL NO: 10A-UI-03469-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHEM-TROL INC
Employer

OC: 01/17/10
Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit
871 IAC 24.25(27) – Job Refusal
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed a department decision dated February 22, 2010, reference 01, that held the claimant voluntarily quit employment with good cause on January 22, 2010, and benefits are allowed. A telephone hearing was held on April 26, 2010. The claimant participated. Joe White, President, and Vaughn Burkholder, Attorney, participated for the employer. Employer Exhibits Two through Seven was received as evidence.

ISSUE:

The issue is whether the claimant voluntarily quit with good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began work on August 15, 1988, and last worked for the employer as a full-time apprentice branch manager on January 22, 2010. The employer placed the claimant on administrative leave without pay on January 22 for refusing to sign a new employment agreement, and it considered him to have resigned when he failed to sign it by the extended deadline of January 29.

When the claimant became a management level employee, he signed a one-year employment contract on January 30, 2009 (expired January 15, 2010). The agreement contained a clause that upon employment termination he would not compete with the employer's business within a 250 mile radius of Des Moines, Iowa the exception of pursuing an applicator-job position as described in his current job duties.

On January 19, 2010, the employer presented to the claimant and 14 other employees a new employment agreement. The employees signed it with the exception of the claimant and Steve Hansen who requested additional time to consider it. The deadline was extended to January 22. When the claimant refused to sign it, he was placed on administrative leave without pay and the deadline date was extended to January 29. The claimant was advised his

refusal to sign would be considered a resignation from employment. The claimant refused to sign the new agreement, because it would apply Kansas law to the issues contained therein, and he believed the covenant not to compete was more restrictive. The covenant limits its application to the claimant soliciting employer-customers upon termination, and applies it to a 30-month period.

The claimant has received benefits on his current claim.

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.

871 IAC 24.25(27) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(27) The claimant left rather than perform the assigned work as instructed.

The administrative law judge concludes that the claimant voluntarily quit employment without good cause attributable to the employer on February 22, 2010 due to a job refusal.

The employer is correct that the new employment agreement contains a less restrictive covenant clause than the one the claimant agreed to the year before. In the proposed agreement, the employer is seeking to restrict the claimant from soliciting its customers while the previous agreement applies it to the "whole of its business." The claimant is free to perform any job upon termination of employment under the proposed agreement while the earlier agreement limited him to the applicator position. The changes as to the length of the agreement and geographic range are not material changes that trigger 871 IAC 24.26(1).

The claimant contends he was discharged. His refusal to sign the new employment agreement in order to continue employment is a voluntary quit (job refusal) without good cause.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Since the claimant has received benefits on his current claim, this issue is remanded to Claims for an overpayment determination.

DECISION:

The department decision dated February 22, 2010, reference 01, is reversed. The claimant voluntarily quit without good cause attributable to the employer on February 22, 2010. Benefits are denied until the claimant has worked in and is paid wages for insured work, equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible. The overpayment issue is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css