

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GLENN M WINSTON
Claimant

APPEAL 16A-UI-12815-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

REPUBLIC SERVICES OF IOWA LLC
Employer

**OC: 10/23/16
Claimant: Respondent (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

Republic Services of Iowa, LLC (employer) filed an appeal from the November 21, 2016, (reference 03) unemployment insurance decision that allowed benefits based upon the determination Glenn M. Winston (claimant) voluntarily left his employment due to a change in his contract of hire which is a good cause reason attributable to the employer. The parties were properly notified about the hearing. A telephone hearing was held on December 16, 2016. The claimant participated personally. The employer participated through Human Resources Manager Audra Adams. Official notice was taken of the administrative record, specifically the fact-finding documents.

ISSUES:

Did the claimant voluntarily quit the employment with good cause attributable to the employer?
Has the claimant been overpaid unemployment insurance benefits?
Can the repayment of those benefits to the agency be waived?
Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Forklift Operator in the employer's Iowa City location beginning on September 9, 2015, and was separated from employment on October 21, 2016, when he quit.

In July 2016, Iowa City Operations Supervisor JC Ellyson and Operations Manager Kevin Burns asked the claimant to work at the employer's Cedar Rapids facility as the work at the Iowa City location had slowed down. The claimant explained he lived two minutes from the Iowa City location and he did not have reliable transportation to make the commute. Ellyson and Burns asked the claimant again to work at the Cedar Rapids location and offered him a company vehicle to make the 30-mile commute. The claimant agreed. He would report to the Iowa City facility and take a company vehicle to Cedar Rapids.

On October 17, 2016, Ellyson and Cedar Rapids Operations Supervisor Jake Thompson each told the claimant he would no longer be able to use the company vehicle to drive from Iowa City to Cedar Rapids but would still be expected to report for work in Cedar Rapids as he was being permanently transferred to the Cedar Rapids facility. The claimant notified his supervisors the next two days he was scheduled to work that he did not have transportation to Cedar Rapids and would not be at work. On October 21, 2016, Burns contacted the claimant and offered him a \$0.50 an hour raise for the claimant to commute to Cedar Rapids with his own vehicle. The claimant declined as his commute to the Iowa City location was his primary reason for accepting the position when he was hired.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$2,226.00, since filing a claim with an effective date of October 23, 2016, for the eight weeks ending December 10, 2016. The administrative record also establishes that the employer did not participate in the fact-finding interview, make a first-hand witness available for rebuttal, or provide written documentation that, without rebuttal, would have resulted in disqualification.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit the employment with good cause attributable to the employer. Benefits are allowed.

Iowa law disqualifies individuals who voluntarily quit employment without good cause attributable to the employer from receiving unemployment insurance benefits. Iowa Code § 96.5(1). Iowa Admin. Code r. 871-24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

The employer made the decision to move the claimant from the Iowa City location to the Cedar Rapids location as a result of a reduction of work at the Iowa City location. The employer knew the claimant did not have reliable transportation and declined to continue providing him with reliable transportation for the commute. The claimant accepted the position in 2015 because he knew he would have transportation to and from work. The employer substantially changed the claimant's contract of hire. The claimant voluntarily quit his employment with good cause attributable to the employer. Accordingly, benefits are allowed.

As benefits are allowed, the issues of overpayment, repayment, and the chargeability of the employer's account are moot.

DECISION:

The November 21, 2016 (reference 03) unemployment insurance decision is affirmed. The claimant voluntarily quit the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible. The issues of overpayment, repayment, and the chargeability of the employer's account are moot.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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