

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAM R DERWIN
Claimant

APPEAL NO. 12A-UI-09283-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

US EXPRESS
Employer

OC: 06/24/12
Claimant: Respondent (2-R)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, US Express, filed an appeal from a decision dated July 25, 2012, reference 02. The decision allowed benefits to the claimant, Sam Derwin. After due notice was issued a hearing was held by telephone conference call on August 28, 2012. The claimant participated on his own behalf. The employer participated by Employee Relations Manager Kelly McGraw and Account Supervisor Billy Chastain.

ISSUE:

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

FINDINGS OF FACT:

Sam Derwin was employed by US Express from May 18, 2011 until January 20, 2012 as a full-time over-the-road truck driver. At the time of hire he received a copy of the employee handbook. It notifies employees of the employer's "mandatory dispatch" policy. Drivers may be dispatched according to the needs of the employer's business. There is no guarantee of a certain date or time when a driver will return home for their scheduled "home time" except for Christmas. Refusal of a dispatch is grounds for discharge under company rules.

Mr. Derwin was scheduled for home time beginning Friday, January 20, 2012. On January 19, 2012, Account Supervisor Billy Chastain contacted the claimant and dispatched him for a run the next day. He refused stating he had plans for being at home with his family. Mr. Chastain reminded him of the policy which provides a possibility of discharge for refusing a dispatch. The next day the claimant did not appear for his dispatch and the account supervisor again contacted him to remind him of the policy. An hour or so later Jeff Gibson, the manager, called Mr. Derwin and assured him he still had a job and asked him to return to work. The claimant refused to return to work and said he quit because he did not like working for a company with the mandatory dispatch.

Sam Derwin has received unemployment benefits since filing a claim with an effective date of June 24, 2012.

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.

The claimant quit by refusing to return to work. His assertion he was fired has not been established because he admitted his job was still available to him according to Mr. Gibson had he chosen to remain. He did not care for the work rules which allow for mandatory dispatch even though he had been working under those rules for eight months. A disagreement with the company policies, as long as they are not illegal, does not constitute good cause attributable to the employer for quitting. The claimant is disqualified.

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.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of July 25, 2012, reference 02, is reversed. Sam Derwin is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs