

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DUSTIN E KASS

Claimant

APPEAL NO: 11A-UI-09962-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOMGAARS SUPPLY INC

Employer

OC: 07/03/11

Claimant: Appellant (4)

Section 96.5-1 – Voluntary Leaving
871 IAC 26.14(7) – Late Call

STATEMENT OF THE CASE:

Dustin E. Kass (claimant) appealed a representative's July 26, 2011 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Bomgaars Supply, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 22, 2011. The claimant participated in the hearing. The employer received the hearing notice and responded by calling the Appeals Section on August 5, 2011. The employer indicated that Cathy Crowl would be available at the scheduled time for the hearing at a specified telephone number with one other witness. However, when the administrative law judge called that number at the scheduled time for the hearing, Ms. Crowl was not available; therefore, the employer did not participate in the hearing. The record was closed at 9:25 am. At 9:32 a.m., the employer called the Appeals Section and requested that the record be reopened. The reason the employer had missed the hearing was because Ms. Crowl had left work for a period of time because of a call from her child's school. Because the administrative law judge has determined that the information provided during the hearing yields a result of mutual benefit to the parties, the administrative law judge will not further consider the employer's request to reopen the record and reschedule the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a disqualifying reason?

FINDINGS OF FACT:

The claimant started working for the employer on July 23, 2010. He worked full time as a puller at the employer's Sioux City, Iowa warehouse. His last day of work was July 24, 2011.

The claimant had begun a search for other better employment prior to June 24, 2011. He had made application to one specific employer, who had the claimant go through the pre-employment testing and examination process, which he passed; that employer then offered

the claimant a job on June 24, with a specified rate of pay and a start date of June 30. As a result, the claimant immediately tendered his resignation to the employer; he advised the employer that his last day of work would be June 29.

The claimant had intended to work through June 29, but after going to lunch on June 27 decided not to return for the remainder of the day and the next two days. He contacted the employer that afternoon and advised that he had decided to make his resignation effective immediately.

On June 29, the new employer's human resources person contacted the claimant and instructed him that he was not to report as scheduled the next day because the new employer's trainer was sick. Rather, he was instructed to report for his first day on July 7. On July 6, the new employer's human resources person again contacted the claimant and advised him that the new employer had lost a particular contract and was going to have to lay off employees, so the claimant also would not be brought on at that time.

After the claimant learned that the job with the new employer would be delayed, first for a week and then indefinitely, he did recontact the employer to inquire about returning to his job there. However, the calls he placed to his prior supervisors were not returned.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for a non-disqualifying reason. Iowa Code § 96.5-1. One reason a voluntary quit is non-disqualifying is if an employee quits for the reason of accepting and entering into new employment. Iowa Code § 96.5-1-a. While leaving to seek new employment where that hoped-for new employment has not been obtained prior to the quit it does not satisfy this exception (871 IAC 24.25(3)), there is also provision under which the employee is deemed to have quit for a non-disqualifying reason "if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment." 871 IAC 24.28(5). However, under these circumstances the employer's account is also not subject to charge.

The claimant did voluntarily quit in order to accept a bona fide offer of other employment. That new employment was then indefinitely delayed through no fault of the claimant's, after he had already relied upon the offer and quit his employment. The claimant is not disqualified from receiving benefits as a result of this quit from the employer in this case, but the employer's account will not be charged.

DECISION:

The representative's July 26, 2011 decision (reference 01) is modified in favor of the claimant. The claimant voluntarily left his employment, but the quit was not disqualifying. The claimant is eligible for unemployment insurance benefits, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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