

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICK CROW
Claimant

APPEAL NO: 12A-UI-08533-D

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRO MOTORSPORTS INC
Employer

OC: 06/10/12

Claimant: Respondent (2/R)

Section 96.5-1 – Voluntary Leaving
Section 96.5-2-a – Discharge
Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Pro Motorsports, Inc. (employer) appealed a representative's July 10, 2012 decision (reference 01) that concluded Nick Crow (claimant) was qualified to receive unemployment insurance benefits effective June 10, 2012 because of a conclusion that the employer was not providing the claimant with his usual hours and wages. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on November 8, 2012. The claimant participated in the hearing. Layne Barnes appeared on the employer's behalf and presented testimony from three other witnesses, Aric Alexander, Brad Fraser, and Eric Welch. This appeal was consolidated for hearing with four related appeals, 12A-UI-10028-D, 12A-UI-10029-D, 11A-UI-10030-D, and 12A-UI-10031-D, which were claimant appeals from decisions issued on August 10, 2012 (reference 03), August 13, 2012 (reference 04), August 13, 2012 (reference 05), and August 13, 2012 (reference 06), respectively, concluding that there had been a disqualifying separation from employment and that the claimant was not able and available for work. 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.

ISSUES:

Was the claimant employed by the employer for less than his usual hours and wages even though he remained able and available for work, and was he therefore eligible for full or partial unemployment insurance benefits?

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on December 20, 2010. He worked part time on a varied schedule and in varied positions. He did not have a set or standard work schedule;

there was no guarantee or promise of hours during any particular period. His work schedule fluctuated depending on his school schedule.

The claimant had been off work for a period of time after May 11, 2012 because of injuries suffered in a racing accident on May 12. He had a doctor's release as of June 5, but as there had been some restrictions in a prior version of the release the employer had received on May 24, seemingly superseded by a doctor's note dated May 29 keeping the claimant off work through June 5, and the employer did not wish to risk further injury to the claimant, the employer sought clarification of the restrictions before bringing the claimant back to work. The employer received that clarification from the claimant's doctor indicating that there were no restrictions on June 14, and the claimant returned to work on June 18. Since the claimant had not been allowed to work the benefit week ending June 16, he established a claim for unemployment insurance benefits and made a weekly claim for benefits that week. As the claimant did not feel that the employer was giving him the number of hours that he had expected to work during the summer, he continued to make weekly claims seeking partial unemployment insurance benefits for weeks after June 16. On June 29 the claimant did not work because he was working elsewhere on a project. In July the claimant did not work between July 5 and July 15 because he was on vacation. He did return and worked on July 16 and July 18.

The claimant felt that the employer's inquiry into the fullness of his medical release was unwarranted and harassment and that the employer's delay in returning him to work and failure to provide him with more hours was punitive. He also believed that the employer's resistance to his claim for unemployment insurance benefits for the period beginning June 10 was unfair and was being held against him. On July 22 the claimant indicated that he either needed the employer to provide him with more hours or he was going to take off some time to do a roofing project. The employer indicated to the claimant that he was attempting to split up the work equally so he could not promise the claimant more work, but that the claimant would be expected to report for his scheduled work or he would consider the claimant to have quit. The claimant did not report for his scheduled work after July 22. The employer assumed he had quit to pursue other options, and ceased putting him on the schedule. The claimant had believed he was cleared to work on the roofing project, but when he was not scheduled for work after July, he assumed he had been fired.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides that a claimant is deemed partially unemployed for insurance benefits if he is not employed at his usual hours and wages and earns less than his weekly benefit amount plus \$15.00 in other employment. Iowa Code § 96.19-38-b.

However, implicit with the concept of allowing benefits for a claimant who is working fewer hours is that the reduction bringing the earned wages low enough to qualify for partial benefits has been because of the choice of the employer, not that the claimant is not able or willing to work the hours available to him. Rather, he must remain available for work on the same basis as when he was previously working. Iowa Code § 96.4-3; 871 IAC 22(2)(a). The employer has a bona fide liability interest to ensure that an employee who has had medical restrictions is free of those restrictions before the employee is returned to work. Here the reason the claimant's earnings for the weeks between June 10 and July 22 were below the partial eligibility level is because he did not adequately demonstrate until June 14 that he was without medical restrictions. Further, in the weeks that followed there were other times where the claimant was not able and available to work the number of hours the employer had available to him because

of vacation and personal obligations, and therefore is thus ineligible for unemployment insurance benefits for that period. 871 IAC 24.23(29).

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

The claimant asserts that his separation was not “voluntary” as he had not desired to end the employment; he argues that it was the employer’s action or inaction in reducing or eliminating his hours which led to the separation and therefore the separation should be treated as a discharge for which the employer would bear the burden to establish it was for misconduct. Iowa Code § 96.6-2; 871 IAC 24.26(21). Rule 871 IAC 24.25 provides that, 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 rule further provides that there are some actions by an employee which are construed as being voluntary quit of the employment, such as where an employee ceases reporting for scheduled work. 871 IAC 24.25.

The claimant may not have understood that an employer has a justifiable interest in ensuring that previously injured employees are fully recovered before they are returned to work, and that an employer has a full right to resist paying for unemployment insurance benefits to persons it believes are not eligible, and the employer may not have understood that an employee who believes he is not employed under the same wages or hours as previously has a right to at least file to seek partial unemployment insurance benefits. It does not appear that either party truly desired there to be a separation of the employment, and it is unfortunate that it appears that the parties have failed to reconcile their differences. However, under the facts of this case the administrative law judge concludes that it was the claimant who ceased reporting for scheduled work even though the employer had work available for him; therefore, the separation is considered to be a voluntary quit. The claimant then has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The claimant has not satisfied his burden. Benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment is remanded the Claims Section.

DECISION:

The representative's July 10, 2012 decision (reference 01) is reversed. The claimant is not eligible for partial unemployment insurance benefits for the period of June 10, 2012 through July 18, 2012. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css