

call before the hearing was over. Shana Reuter, Administrative Assistant, participated in the hearing for the employer, APAC Customer Services of Iowa, LLC. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

#### FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time telephone sales representative until he separated from his employment. The claimant was assigned to the Bell South program. That program was to be eliminated effective August 13, 2005, but in fact was eliminated on August 2, 2005. The claimant's position was to be eliminated. The claimant's last day of work was August 2, 2005. On or before August 2, 2005, the employer offered the claimant another program to work on, but this would not start until August 15, 2005. The claimant refused this program and never returned to the employer after August 2, 2005, because he moved to Cedar Rapids. The new program was similar employment to that which the claimant had while working for the Bell South program.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the claimant's separation from employment was a disqualifying event. It was not through August 13, 2005, or for benefit weeks ending August 6, 2005, and August 13, 2005. It was disqualifying effective August 14, 2005, or benefit week ending August 20, 2005, and continuing thereafter.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency,

unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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(2) 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:

(2) The claimant moved to a different locality.

The employer's witness, Shana Reuter, Administrative Assistant, credibly testified that the program upon which the claimant was working, the Bell South program, ended August 2, 2005, which was the claimant's last day of work when the claimant's position was eliminated. On or before August 2, 2005, the claimant was offered another program. This program was to begin August 15, 2005. The claimant refused that program and never returned to work after August 2, 2005, because he relocated to Cedar Rapids, Iowa. The administrative law judge concludes that the claimant was laid off temporarily for a lack of work or was discharged temporarily but not for disqualifying misconduct effective August 2, 2005 through August 13, 2005. This is not disqualifying and therefore the claimant would be entitled to unemployment insurance benefits for benefit weeks ending August 6 and 13, 2005. However, the employer offered the claimant another program to begin August 15, 2005. The claimant had no work responsibilities on Sunday, August 14, 2005. The claimant never showed back up for this program nor did he accept the program because he moved to Cedar Rapids, Iowa. The administrative law judge concludes that what really occurred here was that the claimant was temporarily laid off for a lack of work but voluntarily left his employment effective August 15, 2005, when he refused to return to work on the new program.

The issue then becomes whether the claimant left his employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer

herein with good cause attributable to the employer. The only evidence of a reason for the claimant to leave his employment was to relocate to Cedar Rapids, Iowa. Moving to a different locality is not good cause attributable to the employer. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily effective August 15, 2005, and from that date is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant from and after August 15, 2005, or benefit week ending August 20, 2005, and continuing thereafter.

In summary, the administrative law judge concludes the claimant is entitled to receive unemployment insurance benefits for two weeks, benefit weeks ending August 6, 2005 and August 13, 2005, because he was temporarily laid off for a lack of work. Thereafter, beginning with benefit week ending August 20, 2005, and continuing, the administrative law judge concludes that the claimant is not entitled to receive unemployment insurance benefits because he left his employment voluntarily without good cause attributable to the employer.

**DECISION:**

The representative's decision of July 31, 2005, reference 02, is modified. The claimant, Cory R. Scharnhorst, is entitled to receive unemployment insurance benefits for two weeks, benefit weeks ending August 6, 2005 and August 13, 2005, because he was temporarily laid off for a lack of work. The administrative law judge concludes that the claimant is not entitled to receive unemployment insurance benefits beginning with benefit week ending August 20, 2005, and continuing thereafter, because he voluntarily left his employment without good cause attributable to the employer.

srs/kjw