

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM J RUDDY
Claimant

APPEAL NO. 08A-UI-05545-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MONEY MATTERS INC
Employer

OC: 04/27/08 R: 04
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

Money Matters, Inc. filed a timely appeal from an unemployment insurance decision dated June 2, 2008, reference 01, that allowed benefits to William J. Ruddy. After due notice was issued, a telephone hearing was held June 30, 2008 with Mr. Ruddy participating. Lawrence J. Lammers, Attorney at Law, appeared on behalf of the employer. President Valerie Search testified. Exhibit One was admitted into evidence.

ISSUE:

Did the claimant leave work voluntarily with good cause attributable to the employer?

Has the claimant been overpaid?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: William J. Ruddy was employed as an accountant by Money Matters, Inc. from August 2006 until April 17, 2008. He was a full-time permanent employee. Upon hire, Mr. Ruddy told President Valerie Search that he would be retiring in 2008 when he turned 66. On May 15, 2007, Mr. Ruddy and Ms. Search worked out an agreement calling for him to work through April 29, 2008. He last worked on April 17, 2008 but was paid through the end of April while he visited Arizona, the location where he and his wife intend to move in the fall of 2008.

In late December 2007, Mr. Ruddy stated in passing that he could work perhaps one or two days a week after the end of April. Ms. Search responded that doing so would require a separate agreement. There were no further negotiations. Mr. Ruddy has received unemployment insurance benefits since filing a claim effective April 27, 2008.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the separation from employment was a disqualifying event. The administrative law judge concludes that it was.

No disqualification is imposed upon a claimant who is hired under an agreement to work until a specific time and who fulfills the contract of hire by working until that date. See 871 IAC 24.26(19). Implicit in this rule is that the ending date is preselected by the employer. The evidence in this record, however, persuades the administrative law judge that the date was preselected by Mr. Ruddy to coincide with his retirement and impending 66th birthday. The administrative law judge views the agreement of May 2007 as the employer's attempt to accommodate Mr. Ruddy's wishes. The separation must be viewed, therefore, as a voluntary quit.

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 has the burden of proof. See Iowa Code section 96.6-2. An individual who leaves employment to accept retirement is ordinarily disqualified for benefits. See 871 IAC 24.25(24). The rule makes an exception for claimants who accept retirement if they could not have continued working. The evidence indicates that the employer was willing to have Mr. Ruddy continue but that he chose not to do so by failing to follow up on the December conversation. Benefits must be withheld.

The claimant has received unemployment insurance benefits to which he is not entitled. They must be recovered in accordance with the provisions of Iowa Code section 96.3-7.

DECISION:

The unemployment insurance decision dated June 2, 2008, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. He has been overpaid by \$2,352.00.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs