

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHAD M UHL
Claimant

APPEAL NO. 08A-UI-03552-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GREG'S LAWN SERVICE INC
Employer

OC: 01/13/08 R: 03
Claimant: Appellant (4)

Iowa Code § 96.5(1)a – Voluntary Leaving – Other Employment
Iowa Code § 96.4(3) - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 2, 2008, reference 01, decision that denied benefits effective February 28, 2008. After due notice was issued, a telephone conference hearing was held on April 24, 2008. Claimant participated. Employer participated through Greg Scharf and Justin Harris.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a seasonal full time landscaper until February 28, 2008 when he gave his notice to quit effective March 7, 2008. He was called to work on March 3 but he was unavailable because he was in Mapleton, Iowa four hours away from February 29 through March 4. He was available March 5, 6, and 7 but there was no work. He found a new job on February 27 at Service Master 380 but opted not to begin work until March 10.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment to accept employment elsewhere.

Iowa Code § 96.5-1-a 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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

871 IAC 24.28(5) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit 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.

Iowa Code § 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Even though the separation was without good cause attributable to the employer and would, standing alone, disqualify the claimant from receiving benefits, the claimant did leave in order to accept other employment but opted not to start the new employment until March 10 and was unavailable for his regular job with Greg's Lawn Service Inc. while out-of-town from February 28 through March 4, 2008. Accordingly, benefits are allowed effective March 9, 2008 and the account of the employer (account number 244711) shall not be charged.

DECISION:

The April 2, 2008, reference 01, decision is modified in favor of the appellant. The claimant voluntarily left his employment to accept other employment but did not make himself available for work with either employer from February 28 through March 4, 2008. Benefits are denied for the period ending March 8, 2008 and allowed effective March 9, 2008, provided the claimant is otherwise eligible. The account of the employer (account number 244711) shall not be charged.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs