

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARK E DUNCAN**  
Claimant

**APPEAL NO: 13A-UI-04813-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CB SERVICES LLC**  
Employer

**OC: 03/31/13**  
**Claimant: Appellant (1/R)**

Iowa Code § 96.5(1) – Voluntary Quit

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's April 16, 2013 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he voluntarily quit for reasons that do not qualify him to receive benefits. The claimant participated in the hearing. Gary Chamberlain, the owner, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive unless the services he performed for Fleetgistics Company is deemed employment instead of self-employment.

**ISSUE:**

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits?

**FINDINGS OF FACT:**

The claimant started working for the employer in August 2010. He worked 26 to 32 hours a week until December 2010. The claimant cleaned the common area in three apartment buildings. Since December 2010 the claimant worked around 24 hours a week.

In June 2012 the employer understood the claimant was looking for other work because he needed a less physically demanding job. The claimant was looking for another job so he could earn more money.

On June 22, 2012 at the conclusion of his second interview with Fleetgistics Company, the claimant learned he started work on Monday, June 25; for Fleetgistics as an independent contractor. The claimant accepted this offer because he would work full time and earn twice as much as he was making while working for the employer. The claimant told the employer on June 22 that this was his last day of work. If the claimant had not been offered the job at Fleetgistics Company, he would not have quit on June 22, 2012.

The claimant established a claim for benefits during the week of March 31, 2013. The claimant established his claim after Fleetgistics Company lost a business contract.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5(1). When a claimant quits for other or better employment, the claimant is not disqualified from receiving benefits and the employer's account will not be charged. Iowa Code § 96.5(1)a. The other employment does not have to be covered, but does not include self-employment. 871 IAC 24.28(5).

As of the date of the hearing, Fleetgistics Company had not reported any wages paid the claimant earned from June 25, 2012, through March 2013. Fleetgistics treated the claimant as an independent contractor, not an employee. Since the claimant did not establish his claim for benefits until after Fleetgistics Company lost a business contract and the claimant worked regular hours at an assigned location, the issue of whether the claimant worked as an independent contractor or as an employee will be remanded to the Tax Department to determine under 871 IAC 23.19.

If the claimant worked as an employee for Fleetgistics Company, he is qualified to receive benefits as of March 31, 2013, based on the reasons for this employment separation because he quit for other employment. If the claimant is not deemed an employee of Fleetgistics Company, he quit to become self-employed and is not qualified to receive benefits as of March 31, 2013. Until the employment relationship between the claimant and Fleetgistics has been decided, the claimant is not qualified to receive benefits.

**DECISION:**

The representative's April 16, 2013 determination (reference 01) is affirmed unless the Tax Department determines the claimant worked as an employee instead of an independent contractor for Fleetgistics Company. This matter is **Remanded** to the Tax Department to evaluate the claimant's services with Fleetgistics Company under the criteria set forth in 871 IAC 23.19. If the Tax Department determines the claimant worked as an independent contractor, the claimant is not qualified to receive benefits based on the reasons for his June 22, 2012 employment separation. If the Tax Department determines the claimant worked for Fleetgistics Company as an employee, his June 22, 2012 employment separation does not disqualify him from receiving benefits. The employer's account under either scenario will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css