

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM M OVERTURF
Claimant

APPEAL NO: 09A-UI-02539-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAPTAIN & CO LTD
Employer

OC: 01/18/09
Claimant: Appellant (4)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

William M. Overturf (claimant) appealed a representative's February 17, 2009 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Captain & Company, Ltd. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 12, 2009 at 10:00 a.m. The claimant participated in the hearing. Rod Burns appeared on the employer's behalf. 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.

ISSUE:

Did the claimant voluntarily quit for a disqualifying reason?

FINDINGS OF FACT:

The claimant started working for the employer on December 5, 2005. He worked full time as a cleaning technician in the employer's cleaning and restoration business, on a base schedule of 7:30 a.m. to 4:00 p.m., Monday through Friday, but subject to emergency calls outside of that schedule. His last day of work was January 12, 2009. The claimant came for an employee meeting that day and then informed the employer that he was leaving the employment for another job; he indicated he was making his resignation effective immediately. He therefore left the employer after about an hour on January 12.

As determined in the concurrently issued decision in appeal 09A-UI-02538-DT, the claimant in fact did enter into his new employment on January 14, 2009 and worked approximately a day and a half. On the afternoon or evening of January 15 or January 16 the claimant contacted Mr. Burns, the employer's owner/manager, and inquired about whether he could return to his employment with the employer, expressing dissatisfaction with his new employment. Mr. Burns was aware that the claimant had taken new employment with a competitor, and was unhappy that he had done so particularly without giving any notice period; as a result, he informed the claimant that there was at best a fifty-percent chance he would allow the claimant to return to his employment. He told the claimant they could both think about it over the weekend. When

the claimant recontacted Mr. Burns on January 19, Mr. Burns confirmed to the claimant that he was not going to be rehired.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for a non-disqualifying reason. Iowa Code § 96.5-1. One reason a voluntary quit is non-disqualifying is if an employee quits for the reason of accepting and entering into new employment. Iowa Code § 96.5-1-a. However, under these circumstances the employer's account is also not subject to charge.

The claimant did voluntarily quit in order accept a bona fide offer of other employment into which he did enter. The claimant is not disqualified from receiving benefits as a result of his January 12, 2009 quit from the employer in this case, but the employer's account will not be charged should the claimant become otherwise eligible for unemployment insurance benefits.

DECISION:

The representative's February 17, 2009 decision (reference 02) is modified in favor of the claimant. The claimant voluntarily left his employment, but the quit was not disqualifying. The claimant is eligible for unemployment insurance benefits, provided he is otherwise eligible, which currently he is not. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css