

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MATTHEW J GALLMEYER**  
Claimant

**APPEAL NO. 10A-UI-16360-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PER MAR SECURITY SERVICES**  
Employer

**OC: 10/24/10**  
**Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

Per Mar Security Services filed a timely appeal from an unemployment insurance decision dated November 19, 2010, reference 02, that allowed benefits to Matthew J. Gallmeyer. After due notice was issued, a telephone hearing was held January 19, 2011, with Mr. Gallmeyer participating. Operations Manager Mike McElmeel, Security Coordinator Nick Weeks, and Supervisor John Wolf participated for the employer. The administrative law judge takes official notice of Agency wage records and benefit payment records.

**ISSUES:**

Was the separation a quit or a discharge?

Was the separation a disqualifying event?

**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: Matthew J. Gallmeyer was employed by Per Mar Security Services from February 16, 2008, until October 22, 2010. He last worked as a part-time security officer. Mr. Gallmeyer was, at the same time, an independent contractor affiliated with the Waterloo Courier.

Mr. Gallmeyer walked off the job on October 22, 2010, to go to his job with the Waterloo Courier. He had been scheduled to work for Per Mar from 6:00 a.m. until 6:00 p.m. Before leaving, Mr. Gallmeyer asked his supervisor, John Wolf, for permission to leave. Mr. Wolf denied the request because he had no one to replace Mr. Gallmeyer. He told Mr. Gallmeyer that Mr. Gallmeyer must choose between Per Mar and the Waterloo Courier. Mr. Gallmeyer chose to leave.

Mr. Gallmeyer filed a claim for unemployment insurance benefits effective October 24, 2010. All of his base period wage credits are from wages paid by Per Mar Security Services.

## REASONING AND CONCLUSIONS OF LAW:

Although the separation was characterized by the fact-finder as a discharge, the employer testified that it viewed the separation as a quit. Mr. Gallmeyer's testimony as to Mr. Wolf's statement about choosing between the two jobs corroborates the employer's testimony and characterization. The administrative law judge concludes that the separation was 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. Although the administrative law judge informed the parties of the provision of the Iowa administrative code relating to voluntary quits from part-time employment, that section of the administrative code does not apply to the present case, since all of the claimant's base period wage credits are from this employer. For Mr. Gallmeyer to receive unemployment insurance benefits at all, the evidence must establish that he left employment with good cause attributable to the employer.

An individual who resigns because of a dislike of the individual's shift is considered to have left work without good cause attributable to the employer. See 871 IAC 24.25(18). One who resigns because of self-employment is also considered to have left without good cause attributable to the employer. See 871 IAC 24.25(19). The administrative law judge concludes from the evidence in the record that Mr. Gallmeyer resigned from Per Mar because his hours conflicted with his self-employment through the Waterloo Courier. Under these circumstances, benefits must be withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The question of whether Mr. Gallmeyer must repay the benefits he has received is remanded to the Unemployment Insurance Services Division.

**DECISION:**

The unemployment insurance decision dated November 19, 2010, reference 02, 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. The question of repayment of benefits is remanded.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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