

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

NELSON F MELLADO
919 COTTONWOOD AVE
IOWA CITY IA 52240

ASAP INC
626 E BLOOMINGTON ST
IOWA CITY IA 52245-2600

Appeal Number: 06A-UI-03756-SWT
OC: 02/19/06 R: 03
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 20, 2006, reference 02, that concluded he was still employed at the same hours and wages as his original contract of hire and was not eligible for partial unemployment insurance benefits. A telephone hearing was held on April 20, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Tonita Rios participated in the hearing on behalf of the employer with a witness, Wanda Hale.

FINDINGS OF FACT:

The claimant worked for the employer as a counselor in the employer's substance abuse treatment business from March 12, 1999, to January 4, 2006. Tonita Rios is the owner of the business. The claimant provided group therapy sessions, individual treatment, and substance abuse assessments.

The claimant was working about 35 to 40 hours per week until May 2005. He had been driving to Ames to work one day per week but discontinued that in May 2005 because the employer was only willing to pay him for two of the four hours of driving time he was doing. Afterward, the claimant was scheduled to work about 25 to 30 hours per week.

The claimant was on vacation from January 5 to February 6, 2006. Before leaving on vacation the claimant had talked to Rios about opening an office in Cedar Rapids in which he would work part time to supplement his income from the employer. Rios expressed interest in being part of the claimant's business venture in Cedar Rapids. When he left on vacation, he understood that when he returned, he would continue working the same schedule had been working for the employer.

The claimant contacted Rios on February 7, 2006, when he returned from vacation. Rios informed him that she wanted to continue with the group therapy clients she had been working with while he was gone. She offered the claimant about eight hours of work per week performing substance abuse assessments. The claimant told Rios that he could not pay his bills with that few hours. The claimant quit his employment due to a substantial reduction in his hours.

The claimant has plans to establish counseling business but has not started working in this business.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer.

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.

871 IAC 24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant quit his employment due to a substantial

reduction in his hours after he returned from his vacation. He is qualified to receive unemployment insurance benefits on that basis.

The next issue in this case is whether the claimant is able to work and available for work as required by the unemployment insurance law in Iowa Code section 96.4-3. The law provides that a person who makes himself unavailable for work because he is devoting time and effort to self employment is ineligible for benefits. 871 IAC 24.23(7). This ends up being a question of whether the self-employment activity interferes with the claimant's ability to secure a full time work. The evidence fails to establish self-employment activity to that degree.

The employer stated in the hearing she has work for the claimant and kept referring to what was said in the fact-finding interview as evidence of that. The unemployment proceeding function is to decide whether a person is qualified to receiving unemployment insurance benefits. It is not the place to make job offers. If the employer wishes to make a legitimate job offer, the unemployment insurance rules provide that the offer either be made in person with the all the terms of the offer (hours, rate of pay, and benefits) spelled out or to be made in a letter sent by registered mail to the claimant. 871 IAC 24.24(1)a. If the claimant fails to accept a bona fide offer of work without good cause, he is subject to disqualification. No such offer has been made to the claimant since he filed for unemployment insurance benefits with an effective date of February 19, 2006, and only refusals of offers of work made after a person has applied for unemployment insurance benefits are disqualifying. 871 IAC 24.24(8).

DECISION:

The unemployment insurance decision dated March 20, 2006, reference 02, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/tjc