

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BOB R DUART
Claimant

APPEAL NO. 07A-UI-03676-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MGV INC
Employer

**OC: 01/14/07 R: 04
Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit
871 IAC 24.27 – Part-time Employment

STATEMENT OF THE CASE:

Bob R. Duart filed a timely appeal from an unemployment insurance decision dated March 29, 2007, reference 02, that disqualified him for benefits following his separation from employment with MGV, Inc. Due notice was issued for a telephone hearing to be held April 25, 2007. The hearing was postponed due to the illness of the ALJ scheduled to hear the case. With the consent of the parties, it was held instead on April 30, 2007, with Mr. Duart participating. Operations Director Tom Kutsch participated for the employer.

ISSUE:

Was the claimant a part-time or full-time employee?

Did the claimant leave work with good cause attributable to the employer?

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: Bob Duart was employed as a lift operator by MGV, Inc., from December 6, 2006, until he resigned March 2, 2007. Officially classified as a full-time seasonal employee, Mr. Duart averaged less than 34 hours of work per week over the course of his employment. Mr. Duart and his wife were both on layoff from the Fred Carlson Company. Both Mr. and Mrs. Duart resigned from MGV in order to return to their hometown when Mrs. Duart was recalled to work. Mr. Duart anticipates returning to work with the Fred Carlson Company in a matter of weeks. Two more weeks of employment with MGV, Inc., a ski resort, was available had Mr. Duart not resigned.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the separation was for good cause attributable to MGV, Inc. It was not.

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.

An individual who resigns in order to move to a different locality or to accompany a spouse in a move to a different locality leaves work without good cause attributable to the employer. See 871 IAC 24.25(2) and (10). The record establishes that Mr. Duart had good personal cause to leave work with MGV, Inc., two weeks before the season ended. The good cause was not attributable to MGV, however. The administrative law judge concludes that MGV, Inc., should not be charged for benefits paid to Mr. Duart based upon his wages there.

The remaining question concerns the unemployment insurance consequences to Mr. Duart. Ordinarily, an individual is disqualified for unemployment insurance benefits if the individual leaves work without good cause attributable to the employee. There is a different result, however, if the individual leaves part-time employment but is otherwise eligible for benefits. See 871 IAC 24.27. The record here establishes both that Mr. Duart was classified as a full-time employee but worked less than full-time hours during his seasonal employment. Since Mr. Duart worked part-time hours and since the unemployment insurance benefits for his current claim year do not include his wages from MGV, Inc., the administrative law judge concludes that the provisions of 871 IAC 24.27 should apply. Mr. Duart remains eligible to receive unemployment insurance benefits, although these benefits shall not be charged to MGV, Inc. Nevertheless, before he may use wages from MGV for computing future unemployment insurance benefits, he must earn ten times his weekly benefit amount in wages for insured work with other employers.

DECISION:

The unemployment insurance decision dated March 29, 2007, reference 02, is reversed. The claimant left part-time employment without good cause attributable to the employer but is monetarily eligible for unemployment insurance benefits. Therefore, he is entitled to receive unemployment insurance benefits, provided he is otherwise eligible. No benefits shall be charged to the account of MGV, Inc. Before the claimant may use his MGV wages for computing future benefits, he must work in and be paid wages for insured work equal to ten times his weekly benefit amount with other employers.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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