

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRANCE O MITCHELL

Claimant

APPEAL NO. 12A-UI-00519-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PREMIER CASTING SERVICES

Employer

OC: 12/11/11

Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Premier Casting Services filed a timely appeal from a representative's decision dated January 11, 2012, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing, was held on February 13, 2012. The claimant participated. The employer participated by Ms. Tami Fuller, office manager.

ISSUE:

At issue is whether the claimant quit employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Terrance Mitchell was employed by Premier Casting Services from October 2, 2010, until November 30, 2011, when he voluntarily left employment. Mr. Mitchell was employed as a full-time fork lift driver and was paid by the hour. His immediate supervisor was Ken Joyce.

Mr. Mitchell quit his employment with Premier Casting Services due to lack of transportation. At the time that Mr. Mitchell was hired, the claimant signed an agreement that although he was beginning employment on the company's first shift, he would agree to be moved to the second shift if the company deemed it necessary. All newly hired employees are classified as general laborers; however, that classification includes chipping and grinding as well as fork truck driving duties. The claimant had accepted a change to third-shift work for the company in the past.

Mr. Mitchell left his employment after he and some other workers were informed that they were being temporarily transferred to second shift work because of an air compressor malfunction at the company. Mr. Mitchell reported for work on the second shift for approximately two days and then discontinued reporting for work by calling in sick.

Mr. Mitchell attempted to receive an accommodation from the company's human resource department, allowing him to begin his second-shift work late due to transportation issues.

Mr. Mitchell is provided transportation by his spouse, as the claimant does not possess a valid driver's license. At the time of the temporary change to second-shift work, Mr. Mitchell's wife had started employment that conflicted with her ability to drive the claimant to work for the 3:00 p.m. second-shift starting time. When the employer was unable to accommodate Mr. Mitchell's need to start work late, the claimant quit employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant left employment with good cause attributable to the employer. It does 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.

871 IAC 24.25(18) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(18) The claimant left because of a dislike of the shift worked.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. See Iowa Code section 96.6-2.

In this matter, the evidence establishes that at the time of hire, Mr. Mitchell was informed and agreed to the possibility of being transferred to second-shift work if company needs required it. Mr. Mitchell signed that agreement and the agreement encompassed the job position that he most recently was assigned to by the company.

The evidence in the record establishes that Mr. Mitchell had been transferred to other shifts in the past and that he understood that the company would transfer employees to different shifts based upon the employer's needs. When the claimant most recently was temporarily transferred to second-shift work, Mr. Mitchell accepted the transfer initially and worked approximately two days. The claimant had certified at the time of hire that he had adequate transportation to and from work. The claimant, however, subsequently quit his job because of transportation issues. The claimant's wife had accepted a new job in a different locale and, at the time that the claimant quit employment, his wife was not able to drive him to work at 3:00 p.m. as the second-shift work required.

Because the claimant had specifically agreed to and had accepted changes to different shifts in the past, the administrative law judge concludes that the claimant's leaving was not attributable to the employer. The claimant quit because he had lost his transportation. The claimant was put on notice at the time of hire that he must have reliable transportation to and from work.

Although the administrative law judge is sympathetic to the claimant's situation, the evidence in the record nonetheless establishes, for the above-stated reasons, that the claimant's leaving was not attributable to the employer. For these reasons, the claimant is disqualified for benefits.

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 issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

DECISION:

The representative's decision dated January 11, 2012, reference 01, is reversed. The claimant quit employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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