

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES A GREENE
Claimant

APPEAL NO. 08A-UI-03108-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**NPC INTERNATIONAL INC
PIZZA HUT**
Employer

**OC: 02/10/08 R: 03
Claimant: Respondent (2)**

Section 96.5(1) – Quit
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Pizza Hut, filed an appeal from a decision dated March 19, 2008, reference 03. The decision allowed benefits to the claimant, James Greene. After due notice was issued, a hearing was held by telephone conference call on April 14, 2008. The claimant participated on his own behalf. The employer participated by General Manager Jennifer Phelps.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

James Greene was employed by Pizza Hut from November 2006 until December 10, 2007, as a part-time delivery driver. Pizza Hut does semi-yearly checks of the drivers' motor vehicle records, and in December 2007 the claimant's record came back showing he had accumulated three moving violations, one in March and two in August 2007.

At that time, General Manager Jennifer Phelps told him he would not be allowed to drive any longer but offered him an inside job with the same number of hours. He elected to quit but did not have a new job at the time. He began working for Gray Transportation December 23, 2007, and that period of employment ended February 9, 2008. The records of Iowa Workforce Development do not establish the amount of wages he earned with the new employer.

James Greene has received unemployment benefits since filing a claim with an effective date of February 10, 2008.

REASONING AND CONCLUSIONS OF LAW:

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 claimant quit because his job was being changed from a driver to an inside worker. The reason for this was that his driving record disqualified him from driving for Pizza Hut, which would be a dischargeable offense normally. When an employer demotes an employee for misconduct warranting discharge, an employee who subsequently leaves employment does so without good cause attributable to the employer, and is disqualified from receiving unemployment benefits. Goodwin v. BPS Guard Services, Inc., 524 N.W.2d 28 (Minn. App. 1994). The change in the contract of hire was made only so that the claimant could continue working rather than being discharged. Therefore, his decision to quit was not with good cause attributable to the employer and he is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of March 19, 2008, reference 03, is reversed. James Green is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$968.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw