

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOEL W MILLER
Claimant

APPEAL NO. 06A-UI-10393-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHADMARK LC
Employer

OC: 09/24/06 R: 02
Claimant: Respondent (4)

Section 96.5-3-a – Refusal to Accept Suitable Work
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Chadmark LC (employer) appealed a representative's October 20, 2006 decision (reference 04) that concluded Joel W. Miller (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant was not working the same way he had been working for the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 8, 2006. The claimant participated in the hearing. Mark Larson appeared on the employer's behalf.

Chad Larson contacted the Appeals Section after the hearing had been closed and the witnesses had been excused. Chad Larson was not allowed to present any testimony because by the time he called, the hearing had been closed. Based on the evidence presented during the hearing, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant qualified to receive benefits as of October 23 if he refused to return to work after a layoff?

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in April 2006. In mid-September 2006, the employer could not work because it rained too much. The employer is in the construction business and the claimant drove a truck. When the ground is too muddy, the employer cannot work. When it was too muddy to work, the employer asked the claimant and other employees to call each day to find out if the employer had work for the employee to do.

The claimant established a claim for unemployment insurance benefits during the week of September 24, 2006. When the claimant called Monday through Friday to see if the employer had work for him to do, he learned the employer did not have any significant work to do. The claimant may have worked about four hours between September 24 and October 19. The evening of October 19, the claimant called Mark and left a message that he was ill and unable to work the next day.

On Monday, October 23, Mark learned the claimant had already turned in his timesheet for the pay period that did not end until the next day. The employer had work for the claimant and other employees to do the week of October 23. Mark called the claimant sometime on Monday, October 23, and left a message for him to call him back. Mark wanted to let the claimant know there was work for him to do. The claimant did not return Mark's call on Monday, October 23.

The claimant did not call on Tuesday, October 24. Again, Mark called the claimant and left a message asking him to return his call. When the claimant did not call again, Mark told Chad that he assumed the claimant quit because he had not called him for two days and did not return his calls.

Chad called and talked to the claimant the evening of October 24. Chad told the claimant he needed to call in everyday and the employer would not put up with the claimant not following this directive. The claimant became upset and retorted that he had called every day, but could not live on the number of hours the employer gave him. Chad understood the claimant quit when the claimant indicated he was not making it on the number of hours the employer had him work. The conversation developed into a verbal confrontation between the two men.

The claimant did not return to work even though the employer had work for the claimant to do. When the claimant went to pick up his check the following week, the employer refused to give the claimant his check until he signed a form verifying he had quit. After the employer refused to give the claimant his check, more problems developed between the claimant and the owners.

The claimant filed claims for the weeks ending October 28, 2006 and November 4, 2006. He received his maximum weekly benefit amount of \$334.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. Initially, the claimant was laid off from work because the employer could not work when it was too muddy. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for seasonal employment. 871 IAC 24.1(113).

Prior to October 23, or for about a month the claimant called everyday to find out if the employer had work for him to do. It is understandable that the claimant became frustrated when the employer did not have work for the claimant to do for this period of time. However, as of the week of October 23, the employer had work and tried to get the claimant to come back to work. The claimant, however, declined to return to work. A claimant is not qualified to receive unemployment insurance benefits if he refuses to accept work or to return to work after a layoff... Iowa Code § 96.5-3-a, 871 IAC 24.24(14). The claimant declined to return to work because he had been laid off for about a month, the employer accused him of failing to call to find out if there was work for him to do and the claimant and owner engaged in a verbal

confrontation. While the claimant may or may not have verbally declined to report back to work, his failure talk to the employer after he had calmed down, call the employer after October 23 and failure to report to work any time during the week of October 23 establishes that the claimant declined to return to work and refused the employer's offer to return to work. As of October 22, 2006, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending October 28 and November 4, 2006. The claimant has been overpaid \$668.00 in benefits he received for these weeks.

DECISION:

The representative's October 20, 2006 decision (reference 04) is modified in the employer's favor. Initially, the claimant was laid off from work and qualified to receive benefits as of September 24, 2006. The employer recalled the claimant to return to work on October 23, but the claimant did not return. The claimant's failure to call the employer after October 24 about work and his failure to report to work during the week of October 23 establishes that the claimant refused to return to work and declined suitable work without good cause. As of October 22, the claimant is not qualified to receive unemployment insurance benefits. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks October 28 and November 4, 2006. The claimant has been overpaid and must repay a total of \$668.00 in benefits he received for these weeks.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/cs