

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEROME F SCHEALLER**  
Claimant

**APPEAL NO: 10A-UI-12506-S**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BEST AUTO INC**  
Employer

**OC: 04/25/10**  
**Claimant: Respondent (5-R)**

Section 96.5-1 – Voluntary Quit  
871 IAC 24.26(1) – Job Change  
Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated September 1, 2010, reference 04, that held the claimant was laid-off for lack of work on April 2, 2010, and benefits are allowed. A hearing was held in Spencer, Iowa on May 23, 2011. The claimant did not participate. Bill Muller, Owner, participated for the employer.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The claimant was hired by the employer on March 21, 2006, and he worked as a full-time service writer until April 2, 2010. The claimant was a salaried employee. The employer made a business decision to eliminate his job and offered him another position to be paid on a commission basis selling cars. Claimant declined the employer job offer, because he would not receive a guaranteed rate of pay, and he left employment.

The employer learned subsequent to leaving its employment that claimant went to work for M.E. Body Shop of Estherville, Iowa. The employer is requesting the department investigate to determine whether claimant is being paid wages by the Shop at the same time he is claiming for and receiving unemployment benefits.

The claimant failed to appear for the hearing.

## **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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 administrative law judge concludes that the claimant voluntarily quit employment with good cause attributable to the employer effective April 2, 2010 due to a substantial change in his job position.

The employer eliminated claimant's job position with a guaranteed salary, and claimant declined the employer proposed job change to be paid on commission. The claimant was not laid-off from work, but his decision to decline the new job constitutes a voluntary quit with good cause.

Iowa Code § 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge further concludes the issue of whether claimant is able and available for work is remanded to Investigation & Recovery for review. The employer has raised an issue whether claimant is working and receiving wages for M.E. Body Shop of Estherville, Iowa while receiving unemployment benefits.

**DECISION:**

The department decision dated September 1, 2010, reference 04, is modified with no effect. The claimant voluntarily quit with good cause attributable to the employer on April 2, 2010. Benefits are allowed, provided the claimant is otherwise eligible. The availability for work issue is remanded to Investigation & Recovery.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs