

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON A KISSICK
Claimant

APPEAL NO. 11A-UI-07798-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BINDERY 1 INC
Employer

OC: 05/08/11
Claimant: Respondent (2-R)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Bindery 1, filed an appeal from a decision dated June 1, 2011, reference 01. The decision allowed benefits to the claimant, Jason Kissick. After due notice was issued, a hearing was held by telephone conference call on July 11, 2011. The claimant participated on his own behalf. The employer participated by President Gigi Toporek.

ISSUE:

The issue is whether the claimant quit

FINDINGS OF FACT:

Jason Kissick was employed by Bindery 1 from March 16, 2010 until March 7, 2011 as a full-time account executive. He was hired under a contract of \$20,000.00 salary, \$30,000.00 against a draw on new accounts, and five percent commission on all sales. This was subject to change depending on work performance.

During the course of his first year of employment, he received warnings for various performance issues such as failing to submit sales documentation in a timely manner and not coming into the office regularly to schedule new appointments. At the yearly review on March 1, 2011, President Gigi Toporek notified the claimant his compensation agreement was being changed because of lack of sales. He would be paid \$10,000.00 in salary with a \$20,000.00 draw against new accounts and the same five percent commission.

The claimant signed the agreement and asked for a week off, which was granted. When he returned, he discovered that he would not be able to sign up for insurance through the company until the next open enrollment period came. He had declined to sign up for it when it was offered during the first year of his employment and had not asked when he signed the new agreement if he could enroll at that time.

He returned to work on March 7, 2011, and notified the employer he was quitting. Continuing work was available to him under the new contract if he had not resigned. Jason Kissick has received unemployment benefits since filing a claim with an effective date of May 8, 2011.

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.

The claimant agreed to a new contract of hire. He did not ask for an opportunity to consider it for a few days before making a decision but signed it immediately. His assumption that he would be able to sign up immediately for insurance, instead of having to wait until the next enrollment period, was not based on any misrepresentation by the employer. He did not take the opportunity to fully discuss all his questions about the new contract before signing it. While this is unfortunate, it is nonetheless binding and any later misgivings do not constitute good cause attributable to the employer for quitting. The claimant is disqualified.

DECISION:

The representative's decision of June 1, 2011, reference 01, is reversed. Jason Kissick is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw