

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL PETRO
Claimant

APPEAL NO: 07A-UI-02946-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**DES MOINES REGIONAL
TRANSIT AUTHORITY**
Employer

OC: 02/04/07 R: 02
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Des Moines Regional Transit Authority (employer) appealed a representative's March 15, 2007 decision (reference 01) that concluded Michael Petro (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 9 2007. The claimant participated in the hearing. Randy Ross, the director of human resources, Cindy Nelson and Jim Tishim appeared on the employer's behalf. Based on the evidence, 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.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer in January 2001. The claimant worked as a full-time diesel mechanic. The claimant earned \$18.92 an hour as a mechanic. The claimant hurt his elbow at work. Since November 2005, the claimant has been restricted to light-duty work. The employer assigned him a light-duty job for 20 hours a week. The claimant's worker's compensation benefits supplemented the claimant when he had light-duty part-time work.

On February 6, 2007, the claimant received permanent restrictions and a doctor indicated he had reached maximum medical improvement. The claimant's permanent restrictions included no lifting over 70 pounds and no repetitive lifting of more than 30 pounds. Based on these permanent restrictions, the employer informed the claimant he was unable to return to work as a diesel mechanic and would no longer be allowed to perform part-time light-duty work.

On February 12, the employer sent the claimant a letter indicating he could continue working as a part-time fixed route bus driver. The starting wage was \$13.49 an hour and the claimant would not be eligible for health insurance or other benefits he had received as a full-time employee. The employer informed the claimant that within three years, he could become a full-time employee again. The claimant did not accept this continued part-time employment.

During the week of February 4, 2007, the claimant established a claim for unemployment insurance benefits. Since the week of February 4, the claimant has been looking for work that involves driving a dump or cement truck because he has a commercial driver's license. The claimant has also looked for construction work and mechanic jobs that do not require him to violate his permanent work restrictions.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause. Iowa Code § 96.5-1. The claimant's worker's compensation benefits ended when he obtained maximum medical improvement. When the claimant obtained maximum medical improvement, the employer only had part-time work available for the claimant. As a part-time bus driver, the claimant's hourly wage would have been reduced (\$18.92 per hour to \$13.49 per hour) and he would no longer have health insurance benefits that he had as a full-time employee.

The law presumes a claimant voluntarily quits employment with good cause when he leaves because of a substantial change in the employment. 871 IAC 24.6(1). Unfortunately, this is a Catch-22 situation for both parties. If the claimant had not received a work-related injury, he would have continued to work as diesel mechanic. When the claimant had reached maximum medical improvement, the claimant was no longer capable of performing all the jobs duties of a diesel mechanic because of his permanent work restrictions. The employer offered the claimant a job that did not violate his work restrictions. Unfortunately, the job the employer had available for the claimant after he recovered from the work-related injury constitutes a substantial change of the employment. For unemployment insurance purposes, the claimant established good cause for quitting his employment.

Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code § 96.4-3. The law does not require a claimant to perform the job he had before he was injured. Instead, the claimant must establish that he is not looking for a tailor-made job which unduly limits his availability for work. 871 IAC 24.23 (16), (17). The evidence shows that the claimant is able to and available for work.

DECISION:

The representative's March 15, 2007 decision (reference 01) is affirmed. The claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits. The claimant established that even with his permanent work restrictions, he is able to

and available for work. As of February 4, 2007, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css