

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAUL W HOTCHKISS

Claimant

APPEAL NO. 06A-UI-10804-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EVERGREENE PAINTING STUDIOS INC

Employer

**OC: 10/1/06 R: 12
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

The employer, Evergreene, filed an appeal from a decision dated October 30, 2006, reference 01. The decision allowed benefits to the claimant, Paul Hotchkiss. After due notice was issued a hearing was held by telephone conference call on November 30, 2006. The claimant participated on his own behalf. The employer participated by Director of Restoration Terry Vanderwell and Project Manager James Joy. Exhibit One was admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

Paul Hotchkiss was employed by Evergreene from July 1997 until September 22, 2006. He was a full-time project manager based out of Topeka, Kansas. He transferred there several years ago in order to assist his mother who was in ill health. During that time he did most of his work in the Topeka, Kansas, area, but frequently would go out of town for a period of weeks to do other projects.

In August 2006, the claimant was involved in estimating a job in Augusta, Kansas, with Director of Restoration Terry Vanderwell. The job might take as long as three months but the claimant's portion of the job would only be about three weeks, an average amount of time he had spent at remote locations in the past. Around September 22, 2006, the employer had requested the claimant to turn in some work product he had produced for another project, along with some equipment. Mr. Hotchkiss assumed this to mean he was being removed from the paint study in which he had been involved and a new employee would be assigned his duties. He further assumed he was going to be sent to Augusta, Kansas, for three months and he did not feel he could leave his mother unattended for that period of time. He submitted a written resignation to the president of the company without stating any specific reason.

Paul Hotchkiss has received unemployment benefits since filing a claim with an effective date of October 1, 2006.

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 he assumed he was going to be assigned to an out-of-town work project for three months. This assumption was based on certain actions of the employer and not any specific notice of a reassignment. The employer's request for the work product was to evaluate the progress being made on that particular project, not to remove Mr. Hotchkiss from the assignment. He may have been sent for three or four weeks to Augusta, Kansas, but this was not an unusual period of time for him to work outside of his base in Topeka, Kansas, and he had taken such short-term assignments in the past few years.

The record establishes the claimant resigned on the basis of erroneous assumptions he made about his future work location and duration. There as no substantial change in the contract of hire. The claimant resigned without 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 October 30, 2006, reference 01, is reversed. Paul Hotchkiss 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 \$2,338.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs