

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SANG T DANG
Claimant

APPEAL NO. 11A-UI-03145-PT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EMCO ENTERPRISES INC
Employer

OC: 03/21/10
Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated March 3, 2011, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 13, 2011. Claimant participated. Employer participated by Mary Halverson, human resources generalist and was represented by Tom Kuiper from Talx.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was employed with the employer from May 6, 1997 through January 18, 2011. He quit his employment when he was recalled to work on a different shift than the shift he had worked for the past seven years. Claimant did not have child care to cover the first hour of the first shift that he was recalled to work. He attempted to find child care but was unable to do so. The claimant's position was covered by a collective bargaining agreement that provided that all workers agreed to be available to both first and second shifts. The claimant had avoided being moved to first shift the past four years by waiving his seniority rights and taking voluntary layoffs when second shift was shut down. This year was different because at the time of recall second shift had not returned to production.

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.

Claimant did not quit due to a change in contract of hire. His contract of hire included both first and second shift. He left his employment due to a lack of childcare, which is without good cause attributable to the employer. See 871 IAC 24.25(17). Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The issue of overpayment is remanded for determination.

DECISION:

The March 3, 2011, reference 01, decision is reversed. Benefits are withheld until such time as claimant works in and has been paid wages equal to ten times his weekly benefit amount, provided claimant is otherwise eligible. The issue of overpayment is remanded for determination.

Ron Pohlman
Administrative Law Judge

Decision Dated and Mailed

rrp/pjs