

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAUL E HUBER
Claimant

APPEAL NO. 08A-UI-05837-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PER MAR SECURITY & RESEARCH CORP
PER MAR SECURITY SERVICES
Employer

OC: 05/11/08 R: 03
Claimant: Appellant (4)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 16, 2008, reference 03, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on July 10, 2008. Claimant participated. Employer participated through Sheryl McFall and Eddie Padilla.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a security site supervisor until April 6, 2008, when he quit. In September 2007 he left to pursue full-time employment with Priority Courier, Inc., but agreed to work additional hours for employer as needed. He worked briefly during the first quarter of 2008 as a substitute and was offered two full-time posts on April 6, 2008. One of those did not come to fruition, but claimant turned down the other, telling Eddie Padilla he was going to continue working with Priority Courier. He retained his uniform and believed he would remain on the substitute employee list, but employer treated the issue as a separation and completely removed him as an employee. Claimant has since been separated from Priority Courier on May 12, 2008.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment to accept employment elsewhere.

Iowa Code § 96.5-1-a 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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Iowa Code § 96.5-3-a provides:

An individual shall be disqualified for benefits:

3. Failure to accept work. If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual. The department shall, if possible, furnish the individual with the names of employers which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the department on forms provided by the department. However, the employers may refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual for benefits until requalified. To requalify for benefits after disqualification under this subsection, the individual shall work in and be paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

a. In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, prior training, length of unemployment, and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and any other factor which the department finds bears a reasonable relation to the purposes of this paragraph. Work is suitable if the work meets all the other criteria of this paragraph and if the gross weekly wages for the work equal or exceed the following percentages of the individual's average weekly wage for insured work paid to the individual during that quarter of the individual's base period in which the individual's wages were highest:

(1) One hundred percent, if the work is offered during the first five weeks of unemployment.

(2) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.

(3) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.

(4) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

871 IAC 24.24(7) provides:

(7) Gainfully employed outside of area where job is offered. Two reasons which generally would be good cause for not accepting an offer of work would be if the claimant were gainfully employed elsewhere or the claimant did not reside in the area where the job was offered.

871 IAC 24.24(8) provides:

(8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

Because employer misunderstood claimant's intention to continue working sporadically, the perceived separation was more accurately a refusal of work because he was otherwise still employed, which would not disqualify him from receiving benefits. However, since that offer occurred outside of the benefit year with an effective date of May 11, the administrative law judge does not have jurisdiction to consider the work refusal issue. Assuming, as employer argues, claimant quit Per Mar, he did it only with the intention to work for Priority Courier. Thus, as a separation, it can be considered a quit of the Per Mar job to take other employment at Priority Courier and that employment was subsequently terminated. Accordingly, benefits are allowed and the account of the employer shall not be charged.

DECISION:

The June 16, 2008, reference 03, decision is modified in favor of the appellant. The claimant voluntarily left his employment in order to work for another employer. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer (account number 040781) shall not be charged.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw