

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CHAD A SMITH
Claimant

BROWN UNDERGROUND INC
Employer

APPEAL NO. 14A-UI-11735-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/19/14
Claimant: Appellant (1)**

Iowa Code § 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated November 12, 2014, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on December 4, 2014. Claimant participated. Employer failed to respond to the hearing notice and did not participate. Employer did call in subsequent to the end of the hearing.

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: As claimant was the only participant in the hearing, all findings of fact were gleaned from claimant's testimony. Claimant last worked for employer on October 10, 2014. Claimant stated that he was hired on a commission only basis. When claimant was hired, there were two service technicians that were working for employer. After claimant was hired, additional service technicians were hired. This created a situation where claimant often had no work to do. Claimant's pay suffered as a result of the additional hires.

Claimant also stated that employer mentioned during orientation that he would receive 25 percent commission during orientation. Claimant was given 24 percent commission on his work. The commission percentage was not written on an employment contract.

Claimant quit the job when the wages received would not cover his living expenses.

Employer called in after the hearing was finished. Employer admitted that the reason he called in late was because he had not read the instructions on the hearing notice that state he was to register his phone number in advance of the hearing.

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.

Iowa Admin. Code r. 871-24.26(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.

Iowa Admin. Code r. 871-24.25(3) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(3) The claimant left to seek other employment but did not secure employment.

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because he was not making the money that he'd hoped to make. Claimant knew when he was hired that his job was commission based and that he would not receive a guaranteed amount of jobs.

Claimant stated that he was promised commission that was one percent higher than he'd actually received. Assuming this to be true, such a change is not considered to be substantial in nature such that it would allow for a voluntary quitting of employment. Quitting a job to secure a higher paying job without having a job offer is not considered to be good cause for a voluntary quit of employment.

Employer has not shown good cause for not registering for this matter in a timely basis. This matter will not be reopened such that the employer can participate.

DECISION:

The decision of the representative dated November 12, 2014, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

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