

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS D HARNEY
Claimant

APPEAL NO. 11A-UI-02223-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KUM & GO LC
Employer

OC: 01/02/10
Claimant: Appellant (4)

Iowa Code § 96.5(1)a – Voluntary Leaving – Other Employment

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 22, 2011 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on March 21, 2011. Claimant participated with Big and Small, Inc. Trainer Jim Shaw and Owner David Miller. Employer participated through Eric Friedrich.

ISSUE:

The issue is whether claimant voluntarily left the employment with 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 most recently worked full-time as a general manager from September 1998 and was separated from employment on November 18, 2010. He left to become an over-the-road driver and began training and ride-alongs with Big and Small, Inc. Trainer Jim Shaw on November 19, 2010. He obtained his CDL on December 29, 2010 and was hired by Big and Small, Inc. as arranged but was not allowed to drive after an insurance company audit opined that he did not have enough recent experience.

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.

871 IAC 24.28(5) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment.

871 IAC 23.43(5) provides:

(5) Sole purpose. The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. No charge shall accrue to the account of the former voluntarily quit employer.

Even though the separation was without good cause attributable to the employer and would, standing alone, disqualify the claimant from receiving benefits, the claimant did leave in order to accept other employment and did train with that employer in anticipation of performing services for the subsequent employer but was separated before having started the new employment. Accordingly, benefits are allowed and the account of the employer shall not be charged.

DECISION:

The February 22, 2011 (reference 01) decision is modified in favor of the appellant. The claimant voluntarily left his employment in order to accept other employment. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer (account number 281703) shall not be charged.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw