

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN R HICKS
Claimant

APPEAL NO. 16A-UI-13301-TNT

**ADMINISTRATIVE LAW JUDGE
DECISION**

O'REILLY AUTOMOTIVE INC
Employer

**OC: 11/06/16
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated December 1, 2016, reference 01, which denied unemployment insurance benefits, finding that the claimant voluntarily quit work on November 15, 2016 to move to a different locality. After due notice was provided, a telephone hearing was held on January 6, 2017. Claimant participated. The employer participated by Mr. Ben Becker, Store Manager.

ISSUE:

The issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: John Hicks was employed by O'Reilly Automotive Inc. from November 30, 2015 until November 15, 2016, when he was removed from the company's employment rolls. Mr. Hicks had begun his employment with O'Reilly Automotive Inc. in the state of Washington. Mr. Hicks later requested a transfer to a company location in Des Moines, Iowa. The transfer was approved and Mr. Hicks continued his employment after it was determined that the claimant's request for transfer should be approved because the Des Moines, Iowa facility had an opening and Mr. Hicks had been willing to accept the position that was open and had been offered to him.

Mr. Hicks worked as a full-time driver for the company and was paid by the hour. His immediate supervisor was Mr. Ben Becker.

On September 15, 2016, Mr. Hicks informed his store manager that he would be leaving his employment to relocate to Great Falls, Montana. The claimant planned to relocate because his fiancé's granddaughter has a serious medical condition and resides in Great Falls. The date of his leaving employment from the Des Moines, Iowa facility was set by Mr. Hicks. In conjunction with his notice to the employer that he would be leaving to relocate, Mr. Hicks also requested that he be approved for a transfer to an O'Reilly auto parts store in Great Falls, Montana.

Mr. Hicks was aware that the approval for a transfer within the company was contingent upon the company's need for an employee at the location where Mr. Hicks wanted to transfer to, the

claimant's successful completion of an interviewing process at that location, and the agreement by the company to allow the claimant to transfer, and the claimant's acceptance of the work that the company had available at the new location.

The manager at the store that Mr. Hicks was leaving forwarded the claimant's transfer request, and after some delay, the claimant was interviewed by the manager of the Great Falls, Montana location.

The auto parts facility in Great Falls, Montana did not have an opening for a full-time driver, but offered Mr. Hicks a position as a type of marketer working 9 a.m. to 6 p.m. Although the employer was willing to allow the claimant to transfer into the position they had open, Mr. Hicks declined the offer because he did not like the type of work or the working hours. Because the claimant had initiated the job separation and because he had not been willing to accept the work available after requesting a transfer, the employer reasonably concluded that the claimant had quit employment to relocate while work had continued to be available to him at his most recent job location and position with the company.

It is Mr. Hicks' belief that he left work for a limited period for compelling personal reasons and that the employer did not have the same or comparable work when he had attempted to return.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that Mr. Hicks left his employment with good cause attributable to the employer; it does not.

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. 871-24.25(2) 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 section 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 section 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:

(2) The claimant moved to a different locality.

In the case at hand, Mr. Hicks left his employment with O'Reilly Automotive Inc. in order to relocate to a different geographic area to facilitate his fiancé's need to be near her granddaughter who was seriously ill. Mr. Hicks initiated the separation from employment and set his final working day. In conjunction with his decision to relocate to Great Falls, Montana, the claimant hoped that he would be able to transfer within the company to similar work at a

company location in Great Falls. At the time of the claimant's leaving employment, he was aware that a transfer within the company had not been approved or had not taken place and that any potential transfer within the company was contingent upon there being an opening at the location where he desired to move and willingness of the company to approve his request and his acceptance of the position that might be available. The employer was under no obligation to have a position available for Mr. Hicks at the new location that was the same as the work he had chosen to leave at the Des Moines, Iowa.

Mr. Hicks has also not offered to return to the job that he has held at the location where he has most recently been employed within ten days.

Iowa Admin. Code r. 871-24.25(20) 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 section 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 section 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:

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

For the above stated reasons, the administrative law judge concludes that the claimant left employment without good cause attributable to the employer. Accordingly, unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

DECISION:

The representative's decision dated December 1, 2016, reference 01, is affirmed. Claimant left employment without good cause attributable to the employer to relocate to a different geographic area. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Terry Nice
Administrative Law Judge

Decision Dated and Mailed

rvs/rvs