

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL D VANPATTEN
Claimant

APPEAL NO. 07A-UI-08445-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAPITAL CITY POWER SPORTS INC
Employer

**OC: 07/29/07 R: 02
Claimant: Respondent (2)**

Section 96.5(1) – Voluntary Quit
Section 96.3(7) – Recovery of Overpayments
Section 96.6(2) – Timeliness of Appeals

STATEMENT OF THE CASE:

Capital City Power Sports, Inc. filed an appeal from a representative's decision dated August 24, 2007, reference 01, which held that no disqualification would be imposed regarding Michael VanPatten's separation from employment. After due notice was issued, a hearing was held by telephone on September 18, 2007. Mr. VanPatten participated personally. The employer participated by Keith Zoellner, General Manager, and Greg Gioffredi, Sales Manager.

ISSUE:

The first issue in this matter is whether the employer's appeal was timely filed or should be deemed timely filed. If it is determined to be timely, the issue then becomes whether Mr. VanPatten was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: The representative's decision that is the subject of this appeal was mailed to the employer at its address of record on August 24, 2007. It was not received until September 4, 2007. The employer filed its appeal by fax on September 5, 2007.

Mr. VanPatten was employed by Capital City Power Sports, Inc. from June 5 until June 27, 2007 as a full-time sales consultant. He was to receive a flat commission of \$250.00 for each motorcycle he sold. It is the employer's policy and practice that the sales consultant who closes the deal is the one to receive the commission. Taking a down payment from a customer is not considered a sale and does not result in any commission.

Mr. VanPatten quit his employment because other consultants were credited with sales to three customers from whom Mr. VanPatten had received down payments. Two of the customers came in on Mr. VanPatten's day off to finalize sales. He had not scheduled appointments for them to come in specifically to see him. With respect to the third customer, the wife requested to work with a different consultant. Mr. VanPatten spoke to his general manager, Keith Zoellner

about the issue on June 27 and quit. Mr. Zoellner indicated he would look into the matter and speak to the sales manager. He asked Mr. VanPatten if there was anything he could do to retain him in the employment. Mr. VanPatten indicated there was not. He went to lunch and did not return. Continued work would have been available if he had not quit.

Mr. VanPatten filed a claim for job insurance benefits effective July 29, 2007. He has received a total of \$2,751.00 in benefits since filing his claim.

REASONING AND CONCLUSIONS OF LAW:

The employer's appeal was due by September 3, 2007. Because the due date fell on Labor Day, it would be extended to the next day, September 4. The employer did not receive the decision until September 4 and, therefore, could not have perfected its appeal by the designated due date. The employer acted with due diligence in filing an appeal on September 5. For the above reasons, the appeal is deemed timely filed as required by Iowa Code section 96.6(2). Therefore, the administrative law judge has jurisdiction over the separation issue.

An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Mr. VanPatten quit because he did not receive commissions on three sales he felt should have been credited to him. He felt the sales were his solely because he received down payments from the three customers. He did not finalize any of the sales and, pursuant to the employer's procedures, was not entitled to a commission. The customers clearly did not feel any commitment to Mr. VanPatten as a sales consultant as they did not seek to finalize their sales with him.

There was no evidence that Mr. VanPatten was treated differently than any of the employer's other sales associates with respect to what constituted a sale on which commissions would be paid. The fact that he did not like the policy did not constitute good cause attributable to the employer for quitting. For the reasons cited herein, he is not entitled to job insurance benefits. Mr. VanPatten has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated August 24, 2007, reference 01, is hereby reversed. Mr. VanPatten voluntarily quit his employment for no good cause attributable to the employer.

Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. VanPatten has been overpaid \$2,751.00 in job insurance benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs