

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

RODGER L OETTCHEN
707 STUART ST
ADAIR IA 50002

CONS SUPPLY CO OF DM INC
600 HOLCOMB AVE
DES MOINES IA 50313

Appeal Number: 05A-UI-00847-DWT
OC: 12/19/04 R: 01
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the *Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.*

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Consolidated Supply Company of Des Moines, Inc. (employer) appealed a representative's January 18, 2005 decision (reference 01) that concluded Rodger L. Oettchen (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant voluntarily quit his employment for reasons that qualified him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 9, 2005. The claimant participated in the hearing. Bill Byars, Mark Prowant and Greg Ploeger appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in 1974. The claimant most recently worked inside sales and received a salary of about \$40,000.00 per year. When the claimant first started his employment, he worked outside sales and developed a new territory for the employer. During his employment, the claimant also worked as a store or branch manager. As an inside sales person some of the claimant's job duties required him to answer the phone, order parts and help customers who called. Byars was the claimant's most recent supervisor.

From September 2004 through November 2004, Byars received calls from customers who complained about the claimant's service. Byars understood some customers did not want to deal with the claimant and instead wanted to transact all business directly with Byars. When Byars talked to the claimant about the status of some orders, he concluded the claimant was not really interested in the customers or his job. The employer noticed increasing problems between the claimant and a delivery driver.

The employer decided the claimant could not continue working as an inside sales person. On November 5, 2004, the employer presented the claimant with a new job position. The employer created a new position as an outside sales person that would cover territory the employer was not presently covering to make sales. The employer offered the claimant an initial salary of \$24,000.00 plus a 13 percent commission, but the salary would be reduced to \$12,000.00 plus a 13 percent commission in February 2005. The claimant asked for time to think about the employer's job proposal.

On November 9, the claimant declined the employer's offer to work as an outside sales person. The claimant declined the position because of the change in wages and the new job duties.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if a claimant voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§96.51, -2-a. The claimant voluntarily quit his employment on November 9, 2004. When a claimant quits, he has the burden to establish he quit with good cause attributable to the employer. Iowa Code §96.6-2.

The law presumes a claimant voluntarily quits employment with good cause when he quits because of a substantial change in the employment relationship. 871 IAC 24.26(1). The employer was not satisfied with the claimant's job performance as an inside sales person. The evidence does not establish that the claimant intentionally or substantially disregarded the employer's interests. The claimant performed the job to the best of ability. The claimant did not commit work-connected misconduct. The employer even realized the claimant did not intentionally service customers satisfactorily and offered him continued employment.

The continued employment, however, was substantially different than the work the claimant had been doing as an inside sales person. The job as an outside sales person required the claimant

to travel and contact potential customers in an attempt to sell the employer's product. Even though the claimant had done this in the past, the claimant's most recent job was as an inside sales person. The employer's newly created position also resulted in a substantial change in the claimant's wages. As an inside sales person, the claimant received a guaranteed \$40,000.00 a year salary. As an outside sales person there was a potential the claimant could earn the same, more or less. The claimant's earnings depended on the amount of sales the claimant could generate and this was an unknown. The evidence establishes that even though the employer may have had compelling business reasons for changing the claimant's job duties and salary, the new job and salary amounts to a substantial change from the work the claimant had most recently agreed to do. The claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits. As of December 19, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's January 18, 2005 decision (reference 01) is affirmed. The claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance. As of December 19, 2004, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/pjs