

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES B CHOL
Claimant

APPEAL NO. 13A-UI-08453-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEVELOPMENTAL SERVICES OF IOWA
Employer

OC: 07/07/13
Claimant: Respondent (2R)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Developmental Services of Iowa filed a timely appeal from a representative's decision dated July 18, 2013, reference 01, which held the claimant eligible to receive unemployment insurance benefits finding that the claimant did not accept an offer of suitable work with Developmental Services but finding that at the time the claimant did not have a valid unemployment insurance claim for benefits. After due notice was provided, a telephone hearing was held on August 26, 2013. The claimant participated. Participating for the employer was Ms. Jennifer Bogaz, Human Resource Manager.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: James Chol was most recently employed by Developmental Services of Iowa from February 5, 2013 until March 16, 2013 when he voluntarily left employment. Mr. Chol was hired as a direct support professional and began working the employer's second shift from 3:00 p.m. until 11:00 p.m.

On February 26, 2013, Mr. Chol requested via text message that he be removed from the second shift because of having to pick up his children at school. The claimant stated during the text message that he could work "at night now." Mr. Chol's supervisor followed the claimant's request by offering him night schedule work, some of which were designated as "sleep shifts" at service locations where the pay is less per hour because employees are allowed to sleep during overnight shifts at those service locations. Mr. Chol accepted the change that he had requested to nighttime work and the "sleep location" where the work was offered.

Although the employer had disclosed that the work would be at a sleep location and the pay would be less, Mr. Chol later objected to the lower pay and refused to continue working.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the claimant left employment with good cause attributable to the employer. He did not.

Iowa Code section 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.

In involuntary leaving cases the claimant has the burden of establishing that he or she left employment with good cause attributable to the employer. In the case at hand, the evidence establishes that Mr. Chol requested a change in scheduling while employed by Developmental Services of Iowa and the employer followed the claimant's request by offering him a night shift work. The evidence establishes that the employer disclosed that the night shift work was at a "sleep location" where the pay per hour was less because employees could take down time during their work shift. Although Mr. Chol agreed to the change he later disagreed with the pay that had been agreed upon and left his employment by refusing to continue working.

Because the evidence in the record establishes that the claimant knew or should have known the rate of pay for the sleep location, the work that he was accepting as it had been disclosed and the claimant had accepted it, the administrative law judge concludes that the claimant's reasons for leaving were not attributable to the employer and disqualifying.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3-7-a, -b.

The matter of deciding the amount of the overpayment and whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The representative's decision dated July 18, 2013, reference 01, is reversed. The claimant voluntarily left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible. The issue of whether the claimant has been overpaid job insurance benefits, the amount of the overpayment and whether the claimant will have to repay the amount or the amount will be charged to the employer is remanded to the Agency for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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