

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN R CHAMBERLAIN
Claimant

APPEAL NO: 12A-UI-02472-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TOMETICH INCORPORATED
Employer

OC: 01/15/12
Claimant: Respondent (4)

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

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's March 7, 2012 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. The claimant participated in the hearing. Dennis Peterson with Merit Resources, Inc. represented the employer; Joe Baughman, the operations manager, testified on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits, but the employer's account will not be charged.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in May 2011 as a full-time driver/mover for Two Men and a Truck. The employer requires employees to call the office between 7 and 8 a.m. when they are unable to work as scheduled.

On September 26, 2011, the claimant's son had to unexpectedly see a dentist. The claimant contacted Baughman's cell phone around 6:30 a.m. to let him know that he was unable to work as scheduled. Baughman was surprised the claimant had called him that early in the morning. When Baughman reminded the claimant that he had warnings for attendance issues, the claimant understood Baughman was upset with him and that he was or would be discharged for ongoing attendance issues.

The claimant was not scheduled to work on September 27, but he was scheduled on September 28. When the claimant did not report to work on September 28, Baughman called him to find out where he was at. When the claimant and Baughman talked, the claimant told Baughman that he had gone back to the Union and would be working for another employer. The claimant started working on October 1 for the new employer.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(1), (2)a. When a claimant quits because he has accepted other employment, the claimant is qualified to receive benefits and the employer's account is exempt from charge. Iowa Code § 96.5(1)a.

The claimant asserted the employer discharged him when he called before 7 a.m. on September 26. It is understandable that Baughman may have been a bit upset with the claimant for calling him that early in the morning. The claimant understood Baughman was not ecstatic about the fact he called off from work again on September 26 when he already had attendance issues. The claimant's assertion that Baughman told him he was discharged is not supported by the facts. If Baughman had discharged him, he would not have called the claimant on September 28 to find out why the claimant was not at work. The claimant understood his job was in jeopardy after he called off on September 26. He took reasonable steps to remain employed and contacted his Union about working for another employer. When Baughman called and talked to the claimant on September 28, the claimant had accepted another job and told the employer he was not returning to work. Based on the evidence, the claimant quit because he had accepted another job. Therefore, the claimant is qualified to receive benefits and the employer's account will not be charged.

DECISION:

The representative's March 7, 2012 determination (reference 01) is modified in the employer's favor. The employer did not discharge the claimant. Instead, the claimant voluntarily quit this employment for another employer. This means that, based on this employment separation, the claimant is qualified to receive benefits as of January 15, 2012, provided he meets all other eligibility requirements. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw