

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUSTIN CHRYSTAL
Claimant

APPEAL NO: 09A-UI-06482-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

TM1 STOP LLC
Employer

OC: 03-22-09
Claimant: Respondent (2R)

Section 96.5-1 – Voluntary Leaving
Section 96.6-2 – Timeliness of Appeal
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 10, 2009, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 21, 2009. The claimant participated in the hearing. Camron Gradford, Reporting and Analysis Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer's appeal is timely and whether the claimant voluntarily left his employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision allowing benefits was mailed to the employer's last-known address of record April 10, 2009. The employer changed its address approximately six months ago and Human Resources sent a change of address form to Iowa Workforce Development but its address was not changed. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by April 20, 2009. The decision was received late so the appeal was not filed until April 24, 2009 (Department's Exhibit D-1), which is after the date noticed on the disqualification decision. Consequently, the administrative law judge concludes the appeal is timely.

The claimant was employed as a full-time reporting and analysis employee for TM1 Stop from February 5, 2007 through March 2, 2009, when he voluntarily quit due to having to work mandatory overtime for which he was not paid. He was on salary but frequently had to work overtime and the employer refused to pay for overtime. The employer viewed it as the claimant's problem because he was unable to meet deadlines but the claimant testified that new clients required more work. Additionally, if the claimant missed a deadline, he lost the commission for the work he had done. He was working up to 70 hours per week but not being compensated for his overtime. The employer told him it was a temporary situation and while the

claimant did not mind working the extra hours and agreed to the overtime he wanted to be compensated for it. The claimant had to work overtime hours to meet his deadlines and his salary was determined by how often he met his deadlines and the goals set by the employer. The employer had given the claimant the choice of going to third shift so he had more time to meet his deadlines or moving to a lower paying position in the call center. He quit by sending an e-mail at 1:13 a.m., March 2, 2009, stating his resignation was effective immediately. He did not give the employer a reason for his leaving.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

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 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. 871 IAC 24.25. Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(21). Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3) and (4). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. The claimant objected to working overtime to meet his deadlines. He was a salaried employee, however, and the employer, like most employers, does not pay overtime to salaried employees. If he believed the situation was unlawful he should have contacted the Department of Labor to inquire if his contention was correct rather than overtime simply being a requirement of his position. Consequently, the administrative law judge concludes the claimant has not established that his separation was for good cause attributable to the employer. Therefore, benefits must be denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The April 10, 2009, reference 01, decision is reversed. The employer's appeal is timely. The claimant voluntarily quit his employment without good cause attributable to the employer and is not eligible to receive unemployment insurance benefits until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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