

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GLENN R SMITH
Claimant

APPEAL NO: 11A-UI-12850-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CWI / CAMPING WORLD INC
Employer

**OC: 07/17/11
Claimant: Respondent (5)**

Section 96.5-1 – Voluntary Leaving
Section 96.7-2-a(2) – Charges Against Employer’s Account

STATEMENT OF THE CASE:

CWI / Camping World, Inc. (employer) appealed a representative’s September 19, 2011 decision (reference 01) that concluded Glenn R. Smith (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties’ last-known addresses of record, a telephone hearing was held on November 1, 2011. The claimant participated in the hearing. Bill Becker appeared on the employer’s behalf and presented testimony from one other witness, Doug Fauble. 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.

ISSUES:

Did the claimant voluntarily quit for a good cause attributable to the employer? Is the employer’s account subject to charge?

FINDINGS OF FACT:

The claimant started working for the employer on August 21, 2011. He worked full time as a salaried service advisor/writer in the employer’s Council Bluffs, Iowa recreational vehicle sales and service business. His last day of work was August 29.

When the claimant had been interviewed hired, it had been done by a service manager who was no longer employed by the employer by August 27. The agreement between the claimant and the service manager who had hired him was that the claimant would work from 7:00 a.m. to about 6:00 p.m. Monday through Friday and every other Saturday. On August 29 the claimant had a discussion at about 8:30 a.m. with the new service manager, Fauble. Fauble told the claimant he should expect to work until the work was done, which could be later than 6:00 p.m. at night, and he should expect to work seven days per week. The claimant responded that this was not what he had agreed to, that he could not work those hours, and that he would have to look for another job. He then walked away and left the premises. He left a voice mail for the general manager, Becker, to give him a call.

On the morning of August 30 the claimant came in to speak with Becker. He confirmed to Becker that he could not do the additional hours beyond what he had agreed to when he was hired. Becker responded that he would have to stand behind Fauble's decision, and confirmed to the claimant that if he could not work the hours now expected, he would need to find another job. The claimant confirmed he could not work those additional hours, and left the business.

The claimant established an unemployment insurance benefit year effective July 17, 2011. He reopened the claim by filing an additional claim effective August 28, 2011.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. A substantial change in contract of hire is recognized as grounds that are good cause for quitting that is attributable to the employer. 871 IAC 24.26(1). A "contract of hire" is merely the terms of employment agreed to between an employee and an employer, either explicitly or implicitly; for purposes of unemployment insurance benefit eligibility, a formal or written employment agreement is not necessary for a "contract of hire" to exist. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986).

"Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). While the employer may have had a good business reason for increasing the hours expected of the claimant, the change in the claimant's job expectations was not what he had agreed to when hired and was a substantial change in the claimant's contract of hire. Dehmel, supra. Benefits are allowed.

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code § 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code § 96.19-3. The claimant's base period began April 1, 2010 and ended March 31, 2011. The employer did not employ the claimant during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

DECISION:

The representative's September 19, 2011 decision (reference 01) is affirmed as modified with no effect on the parties. The claimant voluntarily quit for good cause attributable to the employer. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The employer's account is not subject to charge in the current benefit year.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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