

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRYON SCHMIDT
Claimant

APPEAL NO: 09A-UI-11474-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACTERRA GROUP INC
Employer

OC: 07-05-09
Claimant: Respondent (2R)

Section 96.5-1 - Voluntary Leaving
Section 96.3-7 - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 3, 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 beginning August 25, 2009, and ending September 10, 2009. The claimant participated in the hearing with his mother Maureen O'Brien. Terry Cooper, President and Alyce Smolsky, Employer Representative, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left his employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time acting service manager/technician for Acterra Group, Inc. from October 24, 2005 through July 7, 2009. The employer believed he lacked management skills and because of this, the department was declining both in sales and profitability. The claimant regularly refused to return customer calls and/or forgot what he had agreed to when he did return the calls. He was also creative with the truth to customers and the employer in order to get past his previous false statements to both. The claimant's year-end review in December 2008 was sub-standard and he only received a one and one-half percent raise when he had previously received a three percent yearly raise. He was given specific goals that he needed to maintain his employment and/or to get a bonus. A part of those goals was to grow the business by calling new and existing customers and to send out fliers. The claimant spent a lot of time in the office so was unable to go out and generate more business. He was asked to do a PCI compliance report and never did so. When the employer did not receive the report, it sent over a service technician. The report never materialized and when the technician was sent the third time, the tech said he had already done it two previous times and wondered why the employer did not have those reports. Another customer requested a compliance inspection in April 2009 but it had yet to be done. The customer said the claimant never returned his telephone calls and wanted to know if the employer wanted his business. The employer told the

claimant June 23, 2009, he had two weeks before he was going to be discharged and his last day was scheduled to be July 7, 2009. The claimant acted shocked as if he did not know his job was in jeopardy but the employer could not understand that because he sat down with the claimant at least twice a year to go over the numbers. The claimant was a hard worker though and acted professionally during the first week of his notice period and consequently the employer decided to offer him the service technician position June 26, 2009, with the only requirement being that the claimant told the employer the truth rather than what he thought the employer wanted to hear. The claimant was already performing a large portion of the service tech duties. The employer told the claimant to think about it over the weekend. The claimant told the employer June 30, 2009, he was not interested in the position. He later asked the employer about the position but the employer said he was not going to go into it if the claimant was not interested. The employer planned on keeping the claimant's hours, pay and location the same but the claimant would not have the responsibility of the management duties. The claimant worked until July 7, 2009, and quit his employment at that time.

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 requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit when he told the employer June 30, 2009, he was not interested in the service technician position. He carried out that intent when he stopped reporting to work after July 7, 2009. When an employer discharges an employee for misconduct, the employee is disqualified from receiving unemployment benefits. It is consistent with the statutory framework to extend that analysis to hold that in situations in which an employer demotes an employee for misconduct warranting discharge, an employee who leaves employment should be disqualified from receiving benefits. Goodwin v. BPS Guard Services, Inc., 524 N.W.2d 28 (Minnesota App. 1994). The issue in this case then becomes whether the claimant was demoted for misconduct that was sufficient to warrant his discharge. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law and the same would hold true for a disciplinary demotion. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was the acting service manager/service technician but was unable to meet the goals he had to meet to keep his employment. He was warned in his year-end review at the end of December 2008, about meeting his goals but failed to do so and the business was suffering as a result. The employer has met its burden of showing it had good cause for removing the claimant from his service manager duties and offering him a position where he would still be performing service technician work but without the managerial responsibilities. He would have retained the same hours and wages as well as remaining at the same location. The

claimant has not demonstrated there was a substantial change in his contract of hire. Consequently, the claimant's separation from employment was not with 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 August 3, 2009, reference 01, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to 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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