

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GLEN E BARRITT
Claimant

APPEAL NO: 12A-UI-02495-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRESCENT ELECTRIC SUPPLY COMPANY
Employer

OC: 01/22/12

Claimant: Respondent (4)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Crescent Electric Supply Company (employer) appealed a representative's February 29, 2012 decision (reference 01) that concluded Glen E. Barritt (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 28, 2012. The claimant participated in the hearing. Don Ault appeared on the employer's behalf. During the hearing, Employer's Exhibit One was entered into evidence. 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.

ISSUE:

Did the claimant voluntarily quit for a disqualifying reason?

OUTCOME:

Modified. Benefits allowed; employer's account relieved of charge.

FINDINGS OF FACT:

After a prior period of employment with the employer, the claimant most recently started working for the employer on March 8, 2010. He worked full time as an account manager in the employer's Marshalltown office. His last day of work was May 3, 2011. He tendered his resignation effective that date on that day.

His resignation was not specific as to his reason for quitting, indicating only "I believe that many of my reasons for this decision have been well stated over the last couple of years." However, the immediate stimulus for the claimant's resignation was that he had been in discussions with a representative of another company who had verbally offered a position to the claimant with a specified starting salary, to begin as soon as the claimant completed aptitude testing and a drug screen. The claimant completed those steps by the end of May or early June 2011.

While the claimant's immediate supervisor and branch manager, Ault, was unaware of the claimant's communications with the other company until after May 3, the employer's human resources department had become aware, possibly because of a contact by the prospective employer to the employer; on May 5 it sent a letter to the claimant and the prospective employer advising him that his future employment with the prospective employer could be subject to the provisions of a non-compete agreement the claimant had signed when he returned to the employment. When the claimant initially received the decision, his contact with the prospective employer indicated that it was likely that this could be worked around. However, as discussions continued, by mid to late June it became apparent that the claimant would not be able to effectively work for the prospective employer due to the non-compete provision. As a result, the prospective employer rescinded its offer of employment.

The claimant had left his previous employment with the employer due to concerns regarding how the employer administered its credit policies; the claimant found that the employer's requirements were causing problems with some of his long-time clients. When he returned in March 2010, he had understood that the problems had been addressed. However, by August 2010 the claimant discovered that his concerns remained as they had been. He felt that the employer's practices were resulting in clients being lost to him, and as a result, the prospective commissions that could have resulted and could have brought the claimant past the point of being paid salary only, to receive commission as well. The claimant did not establish that his amount of actual compensation paid ever actually was decreased.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for a non-disqualifying reason. Iowa Code § 96.5-1. One reason a voluntary quit is non-disqualifying is if an employee quits for the reason of accepting and entering into new employment. Iowa Code § 96.5-1-a. While leaving to seek new employment where that hoped-for new employment has not been obtained prior to the quit does not satisfy this exception (871 IAC 24.25(3)), there is also provision under which the employee is deemed to have quit for a non-disqualifying reason "if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment." 871 IAC 24.28(5). However, under these circumstances the employer's account is also not subject to charge. While in this case the claimant did not have hard evidence that he had already been offered and had accepted an offer of new employment prior to May 3, there is also no direct evidence to the contrary; the letter he has from the employer dated May 5 at least does appear to substantiate that there were serious contacts between the claimant and prospective employer virtually at the

same time the claimant gave his resignation. Further, while there is also some question as to whether the claimant quit for the “sole purpose” of accepting an offer of other employment, the administrative law judge concludes that while the claimant might have been disgruntled¹, had it not been for the offer of other employment the claimant would not have quit when he did; he had obviously continued in his employment for about eight months after being disappointed in August 2010 to learn that his concerns regarding the employer’s procedures continued.

The claimant did voluntarily quit in order accept a bona fide offer of other employment which was subsequently rescinded by the prospective employer. The claimant is not disqualified from receiving benefits as a result of his quit from the employer in this case, but the employer’s account will not be charged.

DECISION:

The representative’s February 29, 2012 decision (reference 01) is modified in favor of the claimant. The claimant voluntarily left his employment, but the quit was not disqualifying. The claimant is eligible for unemployment insurance benefits, provided he is otherwise eligible. The employer’s account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs

¹ If it were not for the conclusion that the claimant quit to accept the offer of other employment, the result in this case would be very different. As a quit, the claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a supervisor is not good cause. 871 IAC 24.25(21), (22). The claimant has not provided sufficient evidence to conclude that a reasonable person would find the employer’s work environment detrimental or intolerable. *O’Brien v. Employment Appeal Board*, 494 N.W.2d 660 (Iowa 1993); *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (FL App. 1973). Rather, his complaints do not surpass the ordinary tribulations of the workplace.

Leaving because of a substantial change in the terms of employment would be good cause. The claimant has not established that there was a substantial change in his terms of employment; as to his pay, he would need to establish that he suffered an actual, realized loss of income of at least 15 percent from what he had been earning, not just a speculated loss as to what commissions he might have earned in addition to his salary had clients been able to complete orders. *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988). To the extent that the conditions of the employment were not as he had expected to find them changed upon his return in March 2010, by August 2010 he had learned that the conditions had not changed; even if those changes could have been found to be “substantial,” the claimant did not quit at that time, but rather continued working for an additional at least eight months, thereby acquiescing in the work conditions. *Olson v. Employment Appeal Board*, 460 N.W.2d 865 (Iowa App. 1990).