

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHNATHAN A STEELE
Claimant

APPEAL NO: 09A-UI-17009-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELITE TREE INC
Employer

OC: 10/11/09
Claimant: Respondent (2/R)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The employer appealed a representative's October 30, 2009 decision (reference 01) that concluded the claimant was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been laid off for lack of work. A telephone hearing was held on December 16, 2009. The claimant participated in the hearing. Ethan Roffman, the general foreman, appeared on the employer's behalf. 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 his employment for reasons that qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant has worked for the employer since November 2007. The claimant worked as a full-time crew leader and journeyman.

The claimant agreed to work in Indianola. He worked in Indianola the week of October 5. The claimant talked to Roffman during the week of October 5 and told him he could not work in Indianola on Monday, October 12 because of an appointment he had. The claimant also told Roffman that he did not want to work in Indianola anymore because it was not financially feasible for him to work there. Although there was continuing work for the claimant in Indianola, the employer told the claimant he could work in Rushford. The employer would have had the claimant start working in Rushford on Tuesday, October 13. The claimant declined this work because he had transportation problems at that time. The claimant asked for about a week off so he could resolve his transportation issues.

The claimant does not have a driver's license. He hires someone to drive his vehicle so he can get to work. The employer requires employees to find their own way to the job site. When the claimant started working, another employee worked at the same job as the claimant. This employee drove the claimant's vehicle to work.

The claimant established a claim for benefits during the week of October 11, 2009. A week or two later on October 28, 2009, the claimant contacted Roffman again. The employer did not have any local work for the claimant to do, but told him he could work at a job in western Illinois. The claimant declined this work because it would be difficult for him to get to the job site.

The claimant contacted Roffman again on November 16. The employer indicated he could work in Rushford the following week. On November 22, the employer contacted the claimant and told him the Rushford job had to be reassigned to an employee who had work restrictions as a result of a work-related injury. As a result, the employer did not have work for the claimant to do at Rushford.

The claimant has filed for and received benefits since October 11, 2009.

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 sections 96.5-1, 2-a.

The facts show the claimant did not intend to permanently sever his employment relationship, but his refusal to work in Indianola, Rushford and western Illinois establishes that the claimant's actions resulted in his unemployed status. The employer had work for the claimant to do, but the claimant did not want to work at the assigned locations primarily because of transportation issues. The claimant could have worked for the employer but for personal reasons chose not to do the work. For unemployment insurance purposes, the claimant temporarily quit his employment by placing himself on a leave. When a claimant quits, he has the burden to establish he quit for reasons that qualify him to receive benefits. Iowa Code section 96.6-2.

The law presumes a claimant voluntarily quits employment without good cause when he leaves because of transportation problems. 871 IAC 24.25(1). The claimant did not establish that he "temporarily quit" working for the employer the week of October 11, 2009, for reasons that qualify him to receive benefits. Therefore, as of October 11, 2009, the claimant is not qualified to receive benefits.

The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment will be remanded to the Claims Section.

DECISION:

The representative's October 30, 2009 decision (reference 01) is reversed. The employer did not lay off the claimant for a lack of work. Instead, the claimant voluntarily quit his employment when there was continued work for him to do because he did not have a convenient way to get to the job sites. The claimant quit for reasons that do not qualify him to receive benefits. The claimant is disqualified from receiving unemployment insurance benefits as of October 11, 2009.

This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs