

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRENDON C HOWELL

Claimant

APPEAL NO: 10A-UI-10979-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

O'REILLY AUTOMOTIVE INC

O'REILLY AUTO PARTS

Employer

OC: 06/13/10

Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit
871 IAC 24.25(19) – Self Employment

STATEMENT OF THE CASE:

The claimant appealed a department decision dated July 28, 2010, reference 01, that held he voluntarily quit without good cause effective June 13, 2010, and benefits are denied. A telephone hearing was held on September 23, 2010. The claimant participated. Craig Gosselink, Store Manager, participated for the employer.

ISSUE:

Whether the claimant voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant was hired as a part-time parts specialist on February 9, 2009. The claimant was a scheduled employee and he worked around 20-hours a week. On November 30, 2009, the claimant requested to be moved to supplemental employee status in order to pursue sub-contract work with another business. Supplemental employees work as needed, but the claimant was able to work about the same number of hours a week as he had when on part-time status.

The claimant gave the employer two-week notice on March 17, 2010 that he would be leaving on March 31 for non-employment work. The employer agreed to keep him on supplemental employee status if some work became available. About June 2010, when the claimant ran out of self-employment work, he checked with the employer and it had no positions or work to offer. The claimant had not performed any work for the employer since March 31.

The claimant recently accepted a job on September 7.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.25(19) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(19) The claimant left to enter self-employment.

The administrative law judge concludes that the claimant voluntarily left without good cause for self employment when he gave notice and last worked on March 31, 2010.

While the employer kept the claimant as a supplemental employee, work as needed basis, the giving notice and leaving is considered like a voluntary quit of employment. The reason for leaving is not a good cause attributable to the employer, and the claimant is disqualified.

DECISION:

The department decision dated July 28, 2010 reference 01 is affirmed. The claimant voluntarily quit without good cause attributable to the employer effective March 31, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work, equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs