

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**DON L HALL
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SHEFFIELD IA 50475**

**US POSTAL SERVICE
STATE COORDINATOR
PO BOX 189994
DES MOINES IA 50318-9994**

**US POSTAL SERVICE POSTMASTER
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**Appeal Number: 05A-UCFE-00017-RT
OC: 05-29-05 R: 02
Claimant: Respondent (2-R)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, U.S. Postal Service, filed a timely appeal from an unemployment insurance decision dated June 29, 2005, reference 02, allowing unemployment insurance benefits to the claimant, Don L. Hall. After due notice was issued, a telephone hearing was held on July 25, 2005 with the claimant participating. Catherine Blonker, Postmaster for the employer's post office in Sheffield, Iowa, participated in the hearing for the employer. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a rural carrier associate from December 20, 1997 until he voluntarily quit effective April 23, 2005. The claimant was generally part-time but his hours varied and he worked full-time hours for as much as six weeks in a row. The claimant's main job function was to substitute and replace mail carriers whenever needed. The claimant was never guaranteed part-time hours. Approximately one month prior to April 23, 2005, the claimant submitted a written resignation giving the employer one months notice and informing the employer that he would resign effective April 23, 2005. The claimant did so because he wanted the summer off and he wanted to spend time in Minnesota fishing. The claimant now testifies that he quit because one of two routes for which he acted as a substitute was enlarged from 100 miles to 140 miles raising the time spent on the route from 6.83 hours to 8.18 hours. The claimant also testified that he believed he was going to have to work full-time hours for 90 days beginning June 1, 2005 because another mail carrier was leaving. However, no one ever specifically told the claimant that he would be working full-time hours for that 90 days and in fact, the employer has had no mail carrier working full-time for the 90 days since June 1, 2005. The claimant testified that he was getting run down and was concerned about his health. The claimant is 65 years old. The claimant had never gone to the employer and expressed specific concerns about his hours nor had he ever indicated or announced an intention to quit if any specific concerns were not addressed by the employer. The claimant had talked about quitting several times so that he could spend more time in Minnesota fishing. The claimant had asked for a three-month leave of absence for the summer so he could spend his time in Minnesota fishing, but the employer could not grant his request because the employer did not have full coverage for all the routes. When the claimant resigned he never informed the employer that he would stay if he continued to work just part-time hours. The employer never had an opportunity to see if it could provide just part-time hours for the employer.

Pursuant to his claim for unemployment insurance benefits filed effective May 29, 2005, the claimant has received unemployment insurance benefits in the amount of \$1,539.00 as follows: \$171.00 per week for nine weeks from benefit week ending June 4, 2005 to benefit week ending July 31, 2005.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. He is.

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(18)(21)(24)(25)(27) 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:

(18) The claimant left because of a dislike of the shift worked.

(21) The claimant left because of dissatisfaction with the work environment.
reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(24) The claimant left employment to accept retirement when such claimant could have continued working.

(25) The claimant left to take a vacation.

(27) The claimant left rather than perform the assigned work as instructed.

The parties agree that the claimant voluntarily left his employment or resigned on April 23, 2005, and the administrative law judge so concludes. The issue then becomes whether the claimant left his employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The evidence establishes that the claimant left his employment and stated as much in his written resignation, because that he wanted to take the summer off and that he wanted to spend time fishing in Minnesota. This is confirmed by the evidence that demonstrates that the claimant requested a three-month leave of absence over the summer. This request was denied by the employer because it did not have full coverage of its routes. The claimant now provides other reasons for his quit including that he felt that the route would run him down and he was concerned about his health being 65 years old. It appears to the administrative law judge that the claimant quit because he wanted to take the summer off and wanted to retire and wanted to spend time in Minnesota fishing. However, leaving work voluntarily to take a vacation or to accept retirement is not good cause attributable to the employer. Leaving work voluntarily because of dissatisfaction with the work environment is also not good cause attributable to the employer.

The claimant now testifies that he quit because one of the routes for which he acted as a substitute carrier was increased from 100 miles to 140 miles and increasing the time spent on the route from 6.83 hours to 8.18 hours. The claimant also testified that he quit because he believed that he was going to have to work full-time for 90 days. However, the employer's witness, Catherine Blonker, Postmaster at the post office in Sheffield, Iowa, where the claimant

was employed, credibly testified that she never told the claimant that he would have to work full-time for 90 days and that in fact no employee has worked full-time for 90 days as the claimant believed. The claimant testified that his work was part-time throughout his employment but that he was now facing full-time employment. This is not credible. The evidence indicates that throughout his employment the claimant often worked full-time days up to 6 weeks in a row. The claimant even reluctantly conceded as much. The claimant's specific duties as rural carrier associate was to substitute or replace carriers when needed and this could involve full-time work and often did involve full-time work for as much as six-weeks in a row. The administrative law judge concludes that the claimant also quit because of a dislike of the shift worked and left rather than perform the assigned work as instructed and these are not good cause attributable to the employer. The administrative law judge also concludes that there is not a preponderance of the evidence that the employer substantially breached its contract of hire with the claimant. Ms. Blonker credibly testified that the claimant was never guaranteed part-time hours. His job was always that of a substitute carrier to replace carriers as needed. The claimant often worked full-time days for as much as six-weeks in a row. The administrative law judge also concludes that the enlargement of the route is not significant. It went from 100 miles to 140 miles involving an increase in hours from 6.83 hours to 8.18 hours. This is not a significant change. The claimant testified that it might take him 11 hours to do the route in bad weather. This may be but the claimant knew that he would have to deliver the mail in bad weather and apparently has done so for a number of years. The claimant simply got tired of working and decided to take some time off but this is not good cause attributable to the employer.

There is also not a preponderance of the evidence that the claimant expressed specific concerns to Ms. Blonker about these matters or specifically indicated or announced an intention to quit if his concerns were not addressed. The claimant first testified that he was not sure if he expressed any concerns and then later said that he had but then conceded that he had not really threatened to quit although later said that he would have to quit. Ms. Blonker credibly testified that the claimant never specifically expressed any concerns to her about the matters he now testifies caused him to quit nor did he ever indicate or announce an intention to quit for those reasons. The claimant did talk about quitting several times but this was simply to take off from work and devote time to fishing in Minnesota over the summer. The administrative law judge concludes that the claimant did not give the employer reasonable opportunity to address his concerns before his quit. This is confirmed by the fact that the claimant never indicated to the employer that he would stay on if his work remained part-time. The claimant never gave the employer an opportunity to guarantee the claimant part-time hours.

In summary, and for all the reasons set out above, the administrative law judge concludes that the claimant left his employment voluntarily on April 23, 2005, without good cause attributable to the employer and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

There was evidence at the hearing that the claimant was not able, available, and earnestly and actively seeking work. The claimant testified that he was seeking work in Minnesota but the administrative law judge does not believe this satisfies the requirement because the claimant does not live permanently in Minnesota as noted by his address on the notice of appeal. There is evidence that the claimant also does not want to work and has probably placed restrictions on his availability for work. There may be even physical restrictions prohibiting the claimant from being able to work. In any event, whether the claimant is ineligible to receive unemployment insurance benefits because at relevant times he was not able, available, earnestly and actively seeking work was not set out on the notice of appeal and telephone hearing and the

administrative law judge does not now have jurisdiction to decide that issue. This matter must be remanded to Claims for an investigation and determination as to whether the claimant is and was, at relevant times, able, available, and earnestly and actively seeking work.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$1,539.00 since separating from the employer herein on or about April 23, 2005 and filing for such benefits effective May 29, 2005. The administrative law judge further concludes that the claimant is not entitled to these benefits and is overpaid such benefits. The administrative law judge finally concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of June 29, 2005, reference 02, is reversed. The claimant, Don L. Hall, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits, because he left his employment voluntarily without good cause attributable to the employer. He has been overpaid unemployment insurance benefits in the amount of \$1,539.00. This matter must be remanded to claims for an investigation and determination as to whether the claimant is ineligible to receive unemployment insurance benefits because at relevant times he was not able, available, earnestly and actively seeking work under Iowa Code section 96.4-3.

REMAND

This matter is remanded to Claims for an investigation determination as to whether the claimant is ineligible to receive unemployment insurance benefits because at relevant times, he was not genuinely able, available, and earnestly and actively seeking work under Iowa Code section 96.4-3.

dj/kjw