

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSHUA C STAATS
Claimant

APPEAL NO: 08A-UI-03996-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMCAST CABLEVISION CORP
Employer

**OC: 03/09/08 R: 03
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

Comcast Cablevision Corporation (employer) appealed a representative's April 14, 2008 decision (reference 02) that concluded Joshua C. Staats (claimant) was qualified to receive benefits, and the employer's account was object to charge because the claimant voluntarily quit his employment for reasons that qualify him to receive benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 8, 2008. The claimant participated in the hearing. Clint Head, a human resource generalist, and Les Harper, the direct sales supervisor, 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.

ISSUES:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on January 8, 2007. When the claimant started his employment, he understood that installation of the sales he made were his responsibility. On April 12 while working, the claimant was injured in an automobile accident. The employer's workers' compensation covered the claimant's back injury. The claimant was off work April 12 through June 12, 2007. The workers' compensation doctor's released the claimant to work without any restrictions on June 12, 2007.

When the claimant returned to work, he informed the employer he still experienced back pain. The claimant did not believe he could do any of the installation work. The claimant understood the employer required him to install any sales he made. On June 12, 2007, the claimant talked to Harper about some issues the employer discovered when the claimant had been off work. Harper wanted to know how the claimant planned to resolve the issues before he returned to

work. Arrangements were made for the claimant and Harper to meet again on June 15. The claimant did not attend this meeting or a meeting scheduled on June 18.

On June 21, 2007, the claimant gave the employer his two weeks' notice. The claimant informed the employer he was quitting because he had accepted other employment. The claimant accepted a job as an independent contractor, media consultant, that he began working within a few days.

The claimant established a claim for benefits during the week of April 14, 2008. He filed claims for the weeks ending March 15 through April 19, 2008. He received his maximum weekly benefit amount of \$426.00 for each of these weeks.

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. Iowa Code section 96.5-1. 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. If a claimant quits because he accepted other employment, he is not disqualified from receiving benefits. Iowa Code section 96.5-1-a. The law, however, presumes a claimant quits without good cause if he leaves to enter self-employment. 871 IAC 24.25(19). The law also presumes a claimant quits for reasons that qualify him if he leaves because continued employment would be hazardous to his health. The claimant, however, must present competent evidence showing adequate health reasons to justify termination and before quitting must inform the employer about the work-related health problems and that he intends to quit if the employer does not make reasonable accommodations. 871 IAC 24.26(6)(b).

Although the workers' compensation doctor(s) released the claimant to return to work without any restrictions on June 12, 2007, the claimant still experienced back pain. The claimant concluded he could not do anymore installation work. The claimant's on-going back pain, in addition to the employer talking to the claimant about work-related issues on June 12, prompted the claimant to look into other employment. Before the claimant returned to work, the employer wanted to know how the claimant would resolve or handle the issues the employer talked to him about on June 12. The claimant did not address these concerns before he submitted his June 21 resignation. The employer had no understanding the claimant could not or did not want to perform any installations. If the employer had known this, the employer could have had the claimant work just as a salesperson. The facts do not establish the claimant gave the employer an opportunity to make any accommodations. Also, while a doctor gave the claimant some weight restrictions, it is not known when the weight restrictions were imposed. The employer did not have a record of any weight restrictions as of June 12, 2007. After the claimant learned about a job opening as a media consultant, he decided to pursue this job and ultimately accepted the job. The claimant resigned after he accepted a job as a media consultant. Since the claimant worked as an independent contractor, the facts establish he quit working for the employer primarily to enter self-employment. For unemployment insurance purposes, the claimant quit his employment for reasons that do not qualify him to receive benefits. As of March 9, 2008, the claimant is not qualified to receive benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code section 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending March 15 through April 19, 2008. He has been overpaid \$2,556.00 in benefits he received for these weeks.

DECISION:

The representative's April 14, 2008 decision (reference 02) is reversed. The claimant voluntarily quit his employment for compelling personal reasons that do not qualify him to receive benefits. The claimant is disqualified from receiving unemployment insurance benefits as of March 9, 2008. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The claimant has been overpaid and must repay a total of \$2,556.00 in benefits he received for the weeks ending March 15 through April 19, 2008.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs