

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEE MARCUS MCCALL

Claimant

APPEAL NO. 09A-UI-11148-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TIMO LLC

**BUDGET TRUCK & CAR RENTAL OF
IOWA CITY**

Employer

OC: 06/14/09

Claimant: Respondent (2R)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Budget Truck & Car Rental of Iowa City filed a timely appeal from an unemployment insurance decision dated August 3, 2009, reference 01, that allowed benefits to Marcus McCall. After due notice was issued, a telephone hearing was held August 19, 2009 with Mr. McCall participating. Manager Brianne Vaughn and General Manager Jack Ellis participated for the employer.

ISSUE:

Was the claimant's separation from employment a disqualifying event?

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: Marcus McCall was employed as a detailer by Budget Truck & Car Rental of Iowa City from January 2008 until the employment ended on or about June 18, 2009. Mr. McCall last worked on June 11, 2009. He left work early that day. He did not return to the business until June 16, 2009. He came in that day to pick up his paycheck. He was told to call General Manager Jack Ellis on June 18, 2009 to discuss his employment status. Mr. McCall called on that day, but Mr. Ellis was not there. He did not make further attempts to contact Mr. Ellis.

Mr. McCall was dissatisfied with his pay, \$10.00 per hour. He had requested a raise, but the request had been denied. The company had not reduced Mr. McCall's wages.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the separation was a disqualifying event. It does.

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.

The administrative law judge views the separation as one voluntarily initiated by the claimant. The claimant left work on June 11, 2009. He did not return for his shift on the next day and did not come to the business again until June 16, 2009 to pick up his paycheck. While the testimony of the witnesses varies on this issue, it is clear that the burden was put on Mr. McCall to contact Mr. Ellis about his employment status. Mr. McCall did not do so. While no words of resignation or discharge were spoken, the claimant's behavior persuades the administrative law judge that the claimant desired to end the employment relationship.

The remaining question is whether he left work with good cause attributable to the employer. One who resigns because of a reduction in pay initiated by the employer is entitled to receive unemployment insurance benefits. See 871 IAC 24.26(1). On the other hand, one who resigns because of dissatisfaction with a known rate of pay is disqualified for benefits according to 871 IAC 24.25(13). The claimant has the burden of proof in cases involving a quit. See Iowa Code section 96.6-2. The claimant's testimony that his wage was being reduced by \$0.50 per hour was refuted by the employer witnesses, each of whom testified that no reduction occurred. All are in agreement that Mr. McCall was dissatisfied with his present wage. The administrative law judge concludes that the resignation was due to that dissatisfaction. Benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the

department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The question of whether Mr. McCall must repay benefits already received is remanded to the Unemployment Insurance Services Division.

DECISION:

The unemployment insurance decision dated August 3, 2009, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The question of repayment of benefits is remanded to the Unemployment Insurance Services Division.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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