

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHAD J RUNNELLS

Claimant

APPEAL NO. 10A-UI-14210-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE TJX COMPANIES INC

Employer

OC: 08/08/10

Claimant: Appellant (1)

Iowa Code section 96.5(1)(a) – Voluntary Quit to Accept Other Employment

STATEMENT OF THE CASE:

Chad Runnels filed a timely appeal from the October 8, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 1, 2010. Mr. Runnels participated. Bob Russett represented the employer and presented additional testimony through Senaida Sehic.

ISSUE:

Whether Mr. Runnels separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Chad Runnels was employed by TJ MAXX as a full-time backroom coordinator from March 2007 until August 1, 2009, when he voluntarily quit the employment to engage in self-employment or independent contracting. Mr. Runnels provided the employer with written notice of his intention to quit the employment. Mr. Runnels last performed work for the employer a couple or three days prior to the effective quit date he had provided as part of his written notice. Mr. Runnels became frustrated at work and told Operations Manager Senaida Sehic that he would not be returning after lunch. Ms. Sehic asked Mr. Runnels to reconsider and told Mr. Runnels that the employer would interpret his failure to return for the rest of the day as a voluntary quit. Mr. Runnels did not return after lunch. Later in the day, Mr. Runnels contacted Ms. Sehic to ask whether he still had a job. Ms. Sehic told Mr. Runnels that the employer considered him to have quit the employment.

Mr. Runnels voluntarily quit the employment at TJ MAXX with the intention of assisting a friend who planned to buy one or more FEDEX routes. Mr. Runnels would have performed the proposed work as a self-employed independent contractor, not as his friend's employee. Mr. Runnels did not perform any work for his friend in the new position because the friend's plan to buy the FEDEX route(s) fell through.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1-a 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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Mr. Runnells' testimony about the nature of his work in the proposed FEDEX venture was inconsistent with multiple and clear statements Mr. Runnells made to a Workforce Development representative on October 7, 2010, at which time he clearly stated that he would have worked as an independent contractor. Given the nature of the proposed venture, reason and common sense suggest a proposed independent contracting arrangement, not proposed employment. The administrative law judge concludes that Mr. Runnells' assertion that he would have become a bona fide employee of his friend is not credible. The weight of the evidence establishes instead that Mr. Runnells planned FEDEX venture would have been self-employment. When an individual voluntarily quits employment to pursue self-employment the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(19).

Even if the administrative law judge had concluded the proposed FEDEX venture was employment, the evidence indicates that Mr. Runnells did not perform work in the planned venture because it fell through before he could start work. Thus, Mr. Runnells would still not be eligible for benefits under the special provision contained in Iowa Code section 96.5(1)(a).

The weight of the evidence indicates that Mr. Runnells moved up his quit date by two or three days when he became frustrated at work and left early with the knowledge that the employer would interpret his unauthorized departure as effecting a voluntary quit. The weight of the evidence does not support Mr. Runnells' assertion that he left work early due to illness or that the employer discharged him from the employment prior to the effective quit date. Even if the administrative law judge had concluded that the employer discharged Mr. Runnells two or three days in advance of his effective voluntary quit date, such a conclusion would, at most, allow Mr. Runnells to be eligible for partial benefits only for the 2-3 days remaining in his notice period. See 871 IAC 24.26(12).

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Runnells voluntarily quit the employment without good cause

attributable to the employer. The quit was effective August 1, 2009. Accordingly, Mr. Runnells is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Runnells.

DECISION:

The Agency representative's October 8, 2010, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in a been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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