IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

RYAN D DANIELS
Claimant

TEMPS NOW HEARTLAND INC
Employer

APPEAL NO. 10A-UI-07640-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/25/10
Claimant: Respondent (2-R)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 21, 2010, reference 01, decision that allowed benefits. After due notice was issued, a hearing was commenced on July 15, 2010 and concluded on July 29, 2010. Claimant Ryan Daniels participated and presented additional testimony through his spouse, Crystal Daniels. Laura Gawronski of Personnel Planners represented the employer and presented testimony through Lisa Nicholson, District Manager, Carol Fishback, Account Representative, Mary Birket, Account Manager, and Bruce Kenady, Regional Vice President.

ISSUE:

Whether Mr. Daniels' voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency. Claimant Ryan Daniels performed work for the employer on one full-time temporary work assignment at Menicote in Cedar Falls, where Mr. Daniels drove a forklift and worked on a production line. Mr. Daniels' spouse, Crystal Daniels, worked for the employer at the same facility at the same time. Mr. Daniels started his assignment on February 22, 2010 and voluntarily quit the assignment on April 23, 2010. Ms. Daniels quit her assignment the same day. During her assignment, Ms. Daniels had a series of personality conflicts that prompted Ms. Daniels to make complaints to the Menicote human resources staff. Toward the end the assignment, Ms. Daniels asserted that a Menicote employee was harassing her out of fear that Ms. Daniels would steal that employee's job. On their last day in the assignment, Mr. Daniels accompanied Ms. Daniels to speak with the Menicote human resources department and then to speak with Carol Fishback, onsite Temps Now Heartland representative. During the contact with Ms. Fishback, Ms. Daniels asserted that she was being harassed and could not take it anymore. During the conversation, Ms. Daniels referred to the fact that Mr. Daniels would be quitting with her. When Ms. Fishback questioned Mr. Daniels about that, Mr. Daniels shrugged his shoulders and said that his wife's problems were his problems. Despite being given the opportunity to raise any concerns he had about his

own assignment, Mr. Daniels did not provide Ms. Fishback with any reason for his decision to quit other than the reference to his wife's problems being his.

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.

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.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

The weight of the evidence in the record fails to support Mr. Daniels' assertion that he was being harassed in the assignment. The weight of the evidence indicates instead that Ms. Daniels was have difficulties in her assignment that prompted her to voluntarily quit the assignment and that Mr. Daniels merely quit because he wife had decided to quit and wanted him to quit as well. What is especially noteworthy was Mr. Daniels' failure to mention any problems he was experiencing when given the opportunity to do just that during the conversation with Ms. Fishback on April 23, 2010. This significant omission calls into question the credibility of Mr. Daniels' assertion at hearing that he was being threatened and harassed that very day. The weight of the evidence indicates he was not being harassed that day. The weight of the evidence indicates that Ms. Daniels had gone to Menicote management about prior issues she had with the assignment, but that Mr. Daniels had not taken similar steps regarding his assignment. The weight of the evidence indicates that Mr. Daniels voluntarily quit for personal reasons and not for good cause attributable to the employer. Accordingly, Mr. Daniels 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. Daniels.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the

Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The Agency representative's May 21, 2010, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant 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.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

_____
James E. Timberland
Administrative Law Judge

_____
Decision Dated and Mailed

jet/pjs