IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DANNY R MCDANNEL
Claimant

KWIK SHOP INC
Employer

APPEAL NO. 09A-UI-15562-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09/28/08
Claimant: Respondent (2-R)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 1, 2009, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on November 18, 2009. Claimant Danny McDannel participated. Tari Glaspie, District Advisor, represented the employer. Exhibit One was received into evidence.

ISSUE:

Whether the claimant's voluntary quit was for good caused attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Danny McDannel was employed by Kwik Shop, Inc., as a full-time store manager trainee from August 8, 2009 until September 8, 2009, when he voluntarily quit due to perceived intolerable working conditions. Mr. McDannel's immediate supervisor was Tina White, Store Manager. The employer has a seven-week manager training program for new store managers. To facilitate Mr. McDannel's completion of the training program, Ms. Glaspie placed Mr. McDannel with a Store Manager, Tina White. At the time of hire, Ms. Glaspie told Mr. McDannel that if he had any concerns about the employment he could bring them to her. The employer had another store manager available to mentor Mr. McDannel in the event he was uncomfortable with Ms. White. At the time of hire, Mr. McDannel understood that he would be paid a $13.50 hourly wage during training and would become a salaried employee upon his graduation from the training program. While in training, Mr. McDannel was to work 40-48 hours on average during training. After training, Mr. McDannel would be expected to work 48 hours per week and his annual salary would be.$32,000.00

Mr. McDannel disliked that he was only working 38-45 hours per week instead the full 48 hours the employer expected of Store Managers. Mr. McDannel disliked that Ms. White directed him to note competitor's gas prices on his drive to work on eight occasions. The employer would allow him to claim five minutes of work time for this purpose. Mr. McDannel disliked Ms. White's handling of his questions about being compensated for a managers' meeting that occurred about a week and a half into his employment. Ms. White told Mr. McDannel that he would not

be compensated for attending the manager's meeting. Ms. White also told Mr. McDannel that it would be best that he attend, but his attendance was not compulsory. Ms. Glaspie would have been willing either to compensate Mr. McDannel for his time at the meeting or excuse him from attending and had done the same for other managers in training. Mr. McDannel disliked that he was required on three occasions to go to the workplace and do a 40-minute quality check with another employee and was not compensated for that time. It was the employer's policy to have the manager in training clock in for these qualify surveys, but the discussion about clocking in for these never occurred between Ms. White and Mr. McDannel. Mr. McDannel was otherwise dissatisfied with Ms. White's involvement with his training program. Mr. McDannel thought Ms. White focused too much on menial matters and not enough on the managerial matters Mr. McDannel would be tested on at the end of his training and would need to handle once he was a store manager. Mr. McDannel also thought Ms. White's approach haphazard.

Ms. Glaspie had provided a manager training manual to Mr. McDannel and supplemented that with updated information.

During the course of the employment, Ms. Glaspie came to understand that Mr. McDannel was not entirely comfortable with Ms. White. On August 31, Ms. Glaspie spoke to Mr. McDannel in private and asked if there were issues that Mr. McDannel needed to raise and whether he was willing to continue training with Ms. White. Mr. McDannel said he was willing to continue with Ms. White despite her haphazard approach, but that it was not his place to redirect her to a more orderly approach. Mr. McDannel did not raise any of the compensation concerns to Ms. Glaspie. Ms. Glaspie checked in with Mr. McDannel on other occasions during the brief employment, but Mr. McDannel raised no concerns during those interactions.

On September 9, Mr. McDannel told Ms. White he was quitting the employment and did not have to provide an explanation. The employer continued to have work available for Mr. McDaniel.

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).

Difficulty in getting paid for one's labor is generally sufficient to establish intolerable working conditions. But in this case, the weight of the evidence indicates that Ms. Glaspie gave Mr. McDannel the tools at the beginning of the employment that he could readily have used to readily resolve the issues that caused him concern during the employment. In other words, there was not genuine difficulty standing between Mr. McDannel and appropriate compensation for his labor. Ms. Glaspie had specifically directed Mr. McDannel to come to her with any concerns that arose. Ms. Glaspie reinforced this multiple times during the brief employment. Ms. Glaspie indicated to Mr. McDannel she was willing to provide a different trainer if needed. The weight of the evidence indicates that the employer did not expect Mr. McDannel to work without being compensated for his work. The evidence fails to establish that Ms. White told Mr. McDannel he was required to perform work without being compensated for it.

The weight of the evidence fails to establish intolerable and/or detrimental working conditions that would have prompted a reasonable person to quit the employment. The evidence indicates instead that Mr. McDannel most likely quit because he did not like the nature of the work, did not like the work environment, and/or did not the store manager who acted, in a limited capacity, as his temporary immediate supervisor. None of these reasons for quitting constituted good cause attributable to the employer. See 871 IAC 24.25(21) and (22).

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

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 representatives October 1, 2009, reference 02, 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.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/css