

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIC J HOLLANDER
Claimant

APPEAL NO. 09A-UI-14742-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELITE STYLING & SOUND INC
Employer

OC: 09/06/09
Claimant: Appellant (2)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Eric Hollander filed a timely appeal from the September 29, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 22, 2009. Mr. Hollander participated and presented testimony through former manager, Steve Starrett. Amir Jeshani, President and owner, represented the employer.

ISSUE:

Whether Mr. Hollander's 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: Eric Hollander was employed by Elite Styling & Sound, Inc., as a full-time auto custom equipment installer from January 9, 2009 until July 29, 2009, when he voluntarily quit. Mr. Hollander's regular work hours were 9:00 a.m. to 6:00 p.m., Monday through Friday and 10:00 a.m. to 2:00 p.m. on Saturday. Mr. Hollander's immediate supervisors were managers Charles (CJ) Jones and Steve Starrett.

Mr. Hollander's quit was prompted by an argument with Charles (CJ) Jones on July 29, 2009. When Mr. Jones arrived back at the workplace, he observed Mr. Hollander at the front of the shop. Mr. Hollander was at the front of the shop because he was assisting another employee. Mr. Hollander was not assigned to work at the front, but had a sales background and sometimes did assist at the front. When Mr. Jones saw Mr. Holland at the front, Mr. Jones yelled at Mr. Hollander for not being in the back of shop working on the owner's car. Mr. Jones was prone to yelling at employees. A heated exchanged ensued. At the end of the heated exchange, Mr. Hollander said, "I don't need to deal with this anymore" and quit.

For a few months, the owner repeatedly warned of an impending closing of the shop unless the staff generated sufficient revenue to keep it open. As the expected closing date would approach, the employer would extend the anticipated closure date by a month.

During the last couple pay periods, the employer discontinued direct deposit of employee paychecks and issuance of a paystub due to lack of funds in the employer's bank account. Instead, the employer wrote Mr. Hollander a check. The employer did not provide a check stub. Mr. Holland was left to assume that the employer was still taking the appropriate tax withholding and contributing the employer's portion of appropriate taxes. The checks did not bounce.

The employer's practice was to pay Mr. Hollander off the books if his weekly hours exceeded 40, rather than paying Mr. Hollander an appropriate overtime wage, withhold taxes and paying taxes. While Mr. Hollander's regular wage was \$13.00 per hour, the employer would pay Mr. Hollander \$10.00 per hour in cash for his work beyond 40 hours per week. Mr. Hollander routinely worked more than 40 hours per week. The employer would routinely have the employees, including Mr. Hollander, work on his personal vehicle off the books.

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.

An employee who quits due to dissatisfaction with the work environment, due to a personality conflict with a supervisor, or in response to a reprimand is presumed to have voluntarily quit without good cause attributable to the employer. See 871 IAC 24.25(21), (22) and (28).

On the other hand, 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).

When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976). The administrative law judge notes that the employer did not present any testimony from Charles (CJ) Jones, the only other person directly involved in the verbal confrontation that triggered Mr. Hollander's quit.

The weight of the evidence indicates that Mr. Hollander's quit was triggered by abuse behavior Mr. Jones directed toward Mr. Hollander. The weight of the evidence indicates that Mr. Jones elected to yell at Mr. Hollander to make his point, rather than merely direct Mr. Hollander to return to his assigned duties at the back of the shop. The weight of the evidence indicates that

Mr. Hollander was not merely responding to his single episode of verbal abuse, but was reacting to a pattern of similar behavior. This, along with the financial, payroll and operational irregularities, created intolerable working conditions that would have prompted a reasonable person to leave the employment. For these reasons, the administrative law judge concludes that Mr. Hollander voluntarily quit the employment for good cause attributable to the employer. Accordingly, Mr. Hollander is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Hollander.

DECISION:

The Agency representative's September 29, 2009, reference 01, decision is reversed. The claimant voluntarily quit the employment for good cause attributable to the employer. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs