IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

SIMMS, LEE ANN, L
Claimant

L A LEASING INC
SEDONA STAFFING
Employer

APPEAL NO. 12A-UI-05292-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/08/12
Claimant: Respondent (2-R)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 27, 2012, reference 01, decision that allowed benefits in connection with an April 9, 2012 separation. After due notice was issued, a hearing was held on May 29, 2012. Claimant participated. Chad Baker represented the employer and presented additional testimony through Scarlett Lynn.

ISSUE:

Whether Ms. Simms's voluntary quit on April 9, 2012 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. In November 2011, Ms. Simms started a full-time, temp-to-hire work assignment at Vangent. Ms. Simms had previously performed work for Vangent through Sedona Staffing. The work was a telephone-based customer service representative position. After Ms. Simms had worked 520 hours in the assignment, Ms. Simms became eligible to be considered for hire by Vangent, but working that number of hours did not guarantee that Ms. Simms would become a Vangent employee. Ms. Simms's usual work hours were 12:30 p.m. to 9:00 p.m. On one or two occasions, Vangent required a short amount of overtime work, one or two hours. Ms. Simms routinely volunteered for substantial overtime work that would substantially expand her work hours from to 7:00 a.m. to 9:00 p.m. three to five days a week. In other words, Ms. Simms was voluntarily taking on 14-hour workdays. Ms. Simms wanted the additional pay that came with the overtime hours and wanted to accrue 520 work hours as quickly as possible.

When Ms. Simms worked her regular hours, she would get a 15-minute break midway through the first four hours of her shift, a 30-minute lunch break, and a 15-minute break midway through the second four hours of her shift. For each overtime hour Ms. Simms worked, she would be entitled to a five-minute break. For a while, Ms. Simms was allowed to aggregate these

five-minute breaks so that she could take a 10-minute break every two hours when she was working overtime.

Ms. Simms has a weak bladder and sometimes felt the need to use the restroom outside of her scheduled break times. Vangent allowed this, but requested an electronic communication to a supervisor to request additional breaks and approval from the supervisor before the extra break was taken. Ms. Simms resented this requirement and did not consistently utilize that protocol to request additional restroom breaks. On one or two occasions during the last few days in the employment, Ms. Simms had a bladder accident. Ms. Simms was embarrassed by the experience and on at least one occasion needed to leave work after the bladder accident.

Ms. Simms is a diabetic. According to Ms. Simms, her weak bladder substantially predates her relatively recent diagnosis of diabetes. The employer and/or Vangent invited Ms. Simms to provide medical documentation supporting her need for additional longer breaks-- longer than the five-minute breaks during the overtime hours. Ms. Simms took no steps to provide such documentation. Ms. Simms' decision to leave the employment was not based on any advice from her doctor.

Ms. Simms last performed work in the assignment on Thursday, April 5, 2012. On Friday, April 6, Ms. Simms called in sick. On Monday, April 9, Ms. Simms went to Sedona Staffing and told the employer that she was resigning from the assignment because she was not comfortable in the environment. Ms. Simms provided a written resignation. Two weeks prior to the resignation, Ms. Simms had asked whether the employer had a different assignment for her. Ms. Simms repeated this request on the day she resigned from the assignment at Vangent. The employer did not have a different assignment for Ms. Simms at the time she resigned from the assignment at Vangent, but continued to have work for Ms. Simms in the assignment at Vangent.

Ms. Simms' resignation occurred in the context of concerns about her work performance and her attendance. Vangent had communicated to Sedona Staffing and to Ms. Simms that she was spending too much time in “after call work” (ACW) status, which kept her out of the queue for a new call. The attendance concern focused primarily on Ms. Simms's late returns from the 30-minute lunch breaks. Vangent had documented only one instance, in the middle of February, that might have pertained to a late return from a five-minute break.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1-d provides:

> An individual shall be disqualified for benefits:
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> 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:
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> d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Workforce Development rule 817 IAC 24.26(6) provides as follows:

> Separation because of illness, injury, or pregnancy.
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> a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.
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> b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.
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> In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work–related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

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).

On the other hand, when a claimant voluntarily quits employment due to dissatisfaction with the work environment, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(21).

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.

Ms. Simms presented insufficient evidence to establish that she had a medical/health condition that necessitated her departure from the assignment at Vangent. Ms. Simms' decision to leave that assignment was not based on the advice of a physician. Ms. Simms was invited to provide medical documentation to the employer to support her need for additional breaks, or longer breaks, but never provided such documentation. Vangent offered Ms. Simms a reasonable commendation. Ms. Simms resented Vangent's reasonable requirement that she alert a supervisor of her need to step away from her workstation and Ms. Simms elected not to

consistently use this accommodation Vangent had put in place. The irony is that Ms. Simms' restroom break problems appear to have arisen in connection with the expanded overtime hours she volunteered to work at least 90% of the time. The administrative law judge notes that Ms. Simms was able to work in the assignment more than four months without the bladder crises that she points to as the basis for her decision to leave the employment.

The weight of the evidence fails to establish intolerable or detrimental working conditions that would have prompted a reasonable person to leave the employment. The evidence indicates instead that Ms. Simms quit the assignment due to dissatisfaction with the work and the work environment. Ms. Simms' quit was without good cause attributable to Vangent or Sedona Staffing. Ms. Simms is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Simms.

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 April 27, 2012, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. Effective April 9, 2012, the claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she 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/pjs