

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIA K HOLUB
Claimant

APPEAL NO. 11A-UI-04269-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

TOTAL SOURCE MOLDERS INC
Employer

OC: 07/25/10
Claimant: Respondent (2R)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated March 30, 2011, reference 02, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 28, 2011. Claimant participated. Employer participated by Mike Vogel, President. The record consists of the testimony of Julia Holub; the testimony of Mike Vogel; and Employer's Exhibits 1-3.

ISSUES:

Whether the claimant voluntarily left for good cause attributable to the employer; and

Whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a plastic injection molding company. There are thirty employees. The claimant was hired on September 27, 2010, as a production worker. Her rate of pay was \$9.00 per hour. Approximately two to three weeks later, the claimant was promoted to the position of quality inspector. Her rate of pay was increased to \$10.00 per hour. She was a full-time employee. Her last day of work was March 2, 2011. She voluntarily quit her job on March 3, 2011.

The employer was experiencing slow sales and needed to restructure the work force in order to permit all the employees to keep working and avoid layoffs. The claimant's quality inspector position was eliminated on second shift and the claimant was placed on a production operator position. This resulted in a change in her hourly wage back to the \$9.00 per hour that she was paid when she was originally hired. There was no change in the shift she worked or the number of hours she worked.

Quality inspectors change position more frequently than production workers as they go from machine to machine in order to relieve production workers for breaks and lunch. There are no set times for any break for any employees.

The claimant gave several reasons for quitting:

1. Reduction in hourly wage
2. Change in duties
3. Lack of set break
4. No human resources department
5. Sexual harassment

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.

871 IAC 24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

The evidence is uncontroverted that the claimant initiated the separation of employment. The claimant was informed that she was being switched to a production operator's position and she decided to quit after talking to her husband. The issue is whether the claimant had good cause attributable to the employer for her decision to quit.

The representative concluded that the claimant had had a change in the contract of hire, which constituted good cause attributable to the employer. Iowa law does state that if there is a

substantial change in the conditions of employment, then good cause is attributable to the employer. The key word is "substantial." In this case, the claimant has failed to show a substantial change in the conditions of employment. The claimant started her employment in September 2010 as a production operator at \$9.00 an hour and then was promoted to a quality inspection worker at \$10.00 an hour. The change that led to the claimant's quit was the employer's decision to return her to a production position at \$9.00 an hour.

The change in hourly rate is not substantial. The reduction is approximately 11 per cent. Assuming a forty hour work week, this is a reduction from \$400.00 a week to \$360.00 per week. The hours were the same and the shift was the same. The change in duties was also not substantial. The claimant as a quality inspector relieved other production workers. She wanted to be able to move around and have her break at a set time. Mr. Vogel testified that no employee has a set break. Losing one's ability to move around the plant is not a substantial change.

The claimant also alleged that one of the main reasons she quit was that there was no human resources department. That was true when she was hired. An employer is not required to have a separate human resources department. Mr. Vogel testified that the employer has an open door policy and that he, as president, performed human resources functions. The fact that the employer did not have a human resources department is not good cause attributable to the employer.

Finally, the claimant testified that she quit due to sexual harassment. She did not voice any complaints about sexual harassment during the time she was employed nor did she give this as a reason for quitting her job at the time. No witnesses corroborated the claimant's testimony. The administrative law judge concludes that the mere allegation of sexual harassment is not sufficient proof that the claimant quit for good cause attributable to the employer.

The claimant voluntarily left her job without good cause attributable to the employer. Benefits are denied.

The next issue is overpayment of benefits.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The overpayment issue is remanded to the Claims Section for determination.

DECISION:

The decision of the representative dated March 30, 2011, reference 02, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. The overpayment issue is remanded to the Claims Section for determination.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css