IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DANIEL R LUKASIK
Claimant

MI-T-M CORPORATION
Employer

APPEAL NO. 10A-UI-16759-JT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/03/10
Claimant: Appellant (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Daniel Lukasik filed a timely appeal from the December 2, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 3, 2011. Mr. Lukasik participated. Susan Haxmeier represented the employer. Exhibits One through Five, A and B were received into evidence. The hearing in this matter was consolidated with the hearing in Appeal Number 11A-UI-01107-JT. The administrative law judge took official notice of the Agency's administrative record of benefits (DBRO) paid to the claimant.

ISSUE:

Whether Mr. Lukasik separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Daniel Lukasik worked for the employer during two distinct periods. The most recent period of employment started in May 2007 and ended on July 7, 2010. Mr. Lukasik worked as a full-time brake press operator. Mr. Lukasik's regular work hours in the position were 3:00 p.m. to 1:15 a.m., Monday through Thursday, but he also sometimes worked on Fridays. Mr. Lukasik's immediate supervisors were Lead Man Matt Heacock and Second Shift Supervisor Karl Nemmers.

On June 8, 2010, Mr. Lukasik delivered his written resignation memo to Susan Haxmeier, Human Resources Manager. The memo indicated that Mr. Lukasik was resigning his position effective June 22, 2010. At the time Mr. Lukasik submitted his resignation memo to Susan Haxmeier, Human Resources Manager, Mr. Lukasik cited his desire to spend more time with his daughter as a motivating factor in his decision to leave the employment. At the time Mr. Lukasik submitted his resignation, Ms. Haxmeier told Mr. Lukasik that she was sorry to see him go. Mr. Lukasik did not have another position lined up, but nonetheless wanted to free himself up to search for new employment.

During the two-week notice period Mr. Lukasik had provided to the employer, Mr. Lukasik became aware that Lead Man Matt Heacock was going to be gone for a couple weeks. Mr. Lukasik returned to Human Resources Supervisor Susan Haxmeier and offered to stay on to cover for Mr. Heacock. Ms. Haxmeier told Mr. Lukasik that he was welcome to stay on as long as he liked. Mr. Lukasik did not say anything to indicate he had decided to rescind his resignation and Ms. Haxmeier did not understand his offer to stay a couple extra weeks to cover for Mr. Heacock to be withdrawal of the resignation.

On June 14, Mr. Lukasik applied for a customer service position with the company. On his "Internal Application Form," Mr. Lukasik noted, "Need to be on first shift for Family Reasons." Mr. Lukasik had capitalized and underlined family reasons. Mr. Lukasik was not offered the customer service position, which went to someone else within the company.

Mr. Heacock returned on or about July 7, 2010. On that day, the management team had their weekly meeting and determined they no longer needed Mr. Lukasik to stick around. The management team communicated this to Ms. Haxmeier.

On July 7, 2010, Mr. Lukasik telephoned Ms. Haxmeier to let her know that he was undergoing tests to determine whether he had appendicitis, that he might be undergoing surgery within a couple hours, and that he would need to be off work several weeks. Ms. Haxmeier told Mr. Lukasik that that was okay and that she would just treat July 6, 2010 as Mr. Lukasik's last day. Ms. Haxmeier did not tell Mr. Lukasik that he was laid off or fired. The employer in fact did not want to lose Mr. Lukasik as a skilled and valued employee. Ms. Haxmeier was still relying on the resignation letter that Mr. Lukasik had submitted on June 8, 2010 and his offer to stay to cover for Mr. Heacock. Mr. Lukasik said nothing during the telephone call to challenge Ms. Haxmeier regarding *why* the employer was going to treat July 6, 2010 as his last day.

The employer subsequently brought on a new worker to fill Mr. Lukasik's position.

Mr. Lukasik did indeed have acute appendicitis on July 7, 2010 and did indeed undergo surgery on that day. Mr. Lukasik was then off work upon medical advice as he recovered. Four weeks after the surgery, Mr. Lukasik was released to return to work. Mr. Lukasik did not make further contact with Mi-T-M Corporation after July 7, 2010. Instead, Mr. Lukasik accepted and started other employment on August 5, 2010. Mr. Lukasik established a claim for unemployment insurance benefits that was effective October 3, 2010.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113) provides as follows:

> Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.
> a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory–taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.
> b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In considering an understanding or belief formed, or a conclusion drawn, by an employer or claimant, the administrative law judge considers what a reasonable person would have concluded 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).

After carefully considering all of the testimony and other evidence, the administrative law judge concludes that where the claimant's testimony conflicts with the employer's testimony, the employer's testimony is more credible. The weight of the evidence establishes that the work hours and the time away from family were indeed the primary motivations for Mr. Lukasik's notice of quit submitted on June 8, 2010. This conclusion is supported by the job application Mr. Lukasik completed on June 14, 2010 and the double emphasis he placed on "Family Reasons" as the basis for his need for day shift work hours. Mr. Lukasik's assertion that the work hours were at best a peripheral consideration for the quit notice, in light of sufficient evidence to indicate that work hours were the primary consideration, undermines Mr. Lukasik's credibility generally. In addition, when the employer asked Mr. Lukasik to name some of the suggestions Mr. Lukasik allegedly made about improving operations, which suggestions Mr. Lukasik alleged went unheeded and alleged prompted his resignation, Mr. Lukasik provided an evasive response that would lead a reasonable person to conclude there had been no such suggestions and no such basis for the resignation. Mr. Lukasik's inability to answer a simple question from the employer to support his assertion revealed that the assertion was empty. These attempts to mislead the administrative matters raised significant concerns about Mr. Lukasik's credibility in connection with other assertions. The administrative law judge found no similar issues with the employer's testimony and found the employer's testimony to be balanced, candid, and credible.

The weight of the evidence in the record establishes a voluntary quit due to dissatisfaction with the shift and a desire for greater time with family. A number of factors point to this conclusion. The employer had no intent to separate Mr. Lukasik from the employment at the time Mr. Lukasik submitted his written resignation on June 8, 2001. Mr. Lukasik initiated the conversation regarding his separation from the employment. Mr. Lukasik specifically told the employer that he was quitting the employment effective June 22, 2010 and told the employer he was quitting because he needed day shift work hours so that he could spend more time with his daughter. When Mr. Lukasik later offered to stay the couple weeks Mr. Heacock would be away, Mr. Lukasik, who had previously given notice of his impending quit, said nothing to the employer that would lead a reasonable person in the employer's position to conclude that he was withdrawing his resignation or doing anything other than agreeing to stay a couple extra weeks. The employer reasonably concluded that once Mr. Heacock returned, Mr. Lukasik would be *voluntarily* separating from the employment as he had previously indicated. When Mr. Lukasik notified the employer on July 7, 2010 that he would likely be recovering from an appendectomy for the next four weeks, the employer reasonably concluded, based on what had happened up to that point, that Mr. Lukasik was calling to end his employment. Mr. Lukasik, though preoccupied with his health at the time, said nothing to indicate he was not in fact *voluntarily* separating from the employment based on his prior written resignation. A reasonable person would not have concluded under the circumstances that the employer was discharging Mr. Lukasik from the employment or laying him off. Further, under the circumstances, the fact

that Mr. Lukasik made no contact at all after July 7, 2010, made no application for unemployment insurance benefits until three months later, and instead started new employment as soon as he was released to return to work, all point to a voluntary quit, not a discharge or lay-off.

Iowa Code § 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.

A worker who voluntarily quits employment due to dissatisfaction with the shift or due to family responsibilities is presumed to have quit without out good cause attributable to the employer. See 871 IAC 24.25(18) and (23). The weight of the evidence indicates a voluntary quit and that these were the two reasons for the quit.

Mr. Lukasik voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Lukasik 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. Lukasik.

DECISION:

The Agency representative's December 2, 2010, reference 01, decision is affirmed. 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.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs