IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

REGINA K BRAMER
Claimant

KINION AUTO SALES & SERVICES INC
Employer

APPEAL NO. 13A-UI-04651-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/31/13
Claimant: Appellant (2)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Regina Bramer filed a timely appeal from the April 15, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 9, 2013. Ms. Bramer participated personally and was represented by attorney Harold DeLange, II. Jeff Schulte represented the employer and presented additional testimony through Adam Kinion.

ISSUE:

Whether Ms. Bramer separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Regina Bramer was employed by Kinion Auto Sales & Services, Inc., as a full-time bookkeeper from 2010 and last performed work for the employer on March 28, 2013. Ms. Bramer had three supervisors. These included owners Adam Kinion and Dale Kinion and Office Manager Jeff Schulte. Dale Kinion and Adam Kinion are father and son respectively. Ms. Bramer's work hours were 8:00 a.m. to 5:00 p.m., Monday through Friday.

The final event that triggered the separation occurred on March 28, 2013. At about 8:50 a.m., Adam Kinion went to Ms. Bramer's work area to chastise her for asking his father, Dale Kinion, for gas money. The elder Kinion had granted the request. Adam Kinion asked Ms. Bramer why she would ask his father for gas money when he had just paid for her $1,500.00 dental bill. The employer did not provide a formal dental benefit. The employer had just provided Ms. Bramer with gas money a couple days earlier. The employer had company vehicles for Ms. Bramer to use for company business, but Ms. Bramer insisted on using her personal vehicle so that she could smoke in the vehicle. The employer regularly serviced Ms. Bramer's car at no cost to her. The employer serviced other employees' vehicles at no cost to the employee. Adam Kinion was angry with Ms. Bramer on March 28 and his raised voice indicated as much. When Mr. Kinion

asked Ms. Bramer why she would have approached his father for more gas money, Ms. Bramer responded in a raised voice that she was tired of being blamed for everything and that she was ready to walk out the door. Mr. Kinion said, "Good, go." At that point, Ms. Bramer got up and left. Ms. Bramer departed sometime between 9:00 a.m. and 9:30 a.m. She did not return.

A couple days later Jeff Schulte spoke with Ms. Bramer. Mr. Schulte told Ms. Bramer that Dale Kinion had expected her to come back the same day she left, but that Adam Kinion did not want her to return to the employment.

Ms. Bramer's separation from the employment occurred in the context of financial pressures the employer was experiencing at tax time. Shortly before the March 28 interaction, Kinion Auto had learned from its tax accountant that the cost of goods sold recorded in the employer's QuickBooks software was erroneous and that the employer's tax liability would be greater than expected. Mr. Schulte had provided Ms. Bramer with the erroneous cost of goods sold figures and Ms. Bramer, in the course of performing her regular duties, had entered those amounts into the QuickBooks software. The added financial stress factored heavily in Adam Kinion's decision to confront Ms. Bramer on March 28 about asking his father for gas money.

A couple days before Ms. Bramer separated from the employment, Adam Kinion had received a telephone call from an upset vendor asking why Kinion Auto Sales & Services had not paid its bill. Mr. Kinion went to Ms. Bramer's work area with the same question and spoke to Ms. Bramer in a raised voice. Ms. Bramer had the employer's bills and checks to pay those bills in a stack on the corner of her desk.

During the last few months of Ms. Bramer's employment, Adam Kinion had made Ms. Bramer responsible for monitoring the work of a new employee, Sherry Burks. Ms. Burks was hired to provide office support for the parts area. Ms. Bramer would regularly check on Ms. Burks' work and would report back to Mr. Kinion that she was performing satisfactorily. Despite those reports, Mr. Kinion continued to conclude otherwise. Ms. Burks separated from the employer a couple weeks before Ms. Bramer separated from the employer.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). 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.

Ms. Bramer argues that the employer initiated the separation by telling her to go. The employer denies telling Ms. Bramer to go and asserts instead that Ms. Bramer simply walked out, leaving the employer without a much needed bookkeeper. The weight of the evidence establishes a voluntary quit, not a discharge. It was Ms. Bramer who brought up the notion of separating from the employment on March 28, 2013, not the employer. Ms. Bramer did indeed indicate to the employer on that day that she had had enough and was ready to leave. Ms. Bramer made a

threat to quit and the employer merely invited her to act on the threat if she saw fit to do so. The employer's, "Good, go" was not in fact a discharge from the employment. The employer did not escort her from the workplace or otherwise act in a manner that indicated that the employer was ending the employment. Instead, Ms. Bramer acted on her threat and quit on the spot.

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.

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).

The weight of the evidence indicates that the employer is somewhat disingenuous in minimizing the situation concerning the higher than expected tax burden. The weight of the evidence indicates that the employer was under acute financial strain and that is precisely why Adam Kinion's temper was so hot while he was dealing with Ms. Bramer. It may well have been in bad taste and ungrateful for Ms. Bramer to ask Dale Kinion for gas money for her personal vehicle so soon after a prior request for gas money and in light of the employer's generosity in paying her dental bill. However, that did not give Adam Kinion license to yell at Ms. Bramer on March 28. The weight of the evidence indicates that he did indeed yell at Ms. Kinion that day and had indeed yelled at her a couple days before about the unpaid vendor. The weight of the evidence indicates that Adam Kinion was in the habit of yelling at Ms. Bramer and this was part of what he euphemistically called treating her like family.

An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995). Use of foul language can alone be a sufficient ground for a misconduct disqualification for unemployment benefits. Warrell v. Iowa Dept. of Job Service, 356 N.W.2d 587 (Iowa Ct. App. 1984). At the same time, an employee had the right to expect decency and civility from the employer.

Regardless of whether Ms. Bramer was in the wrong for asking for gas money or for accepting other perks from the employer, Ms. Bramer was not obligated to endure being repeatedly yelled at by the employer. The employer's conduct amounts to verbal abuse and created intolerable and detrimental working conditions that would have prompted a reasonable person to leave the employment.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Bramer voluntarily quit the employment for good cause attributable to the employer. Accordingly, Ms. Bramer is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The Agency representatives April 15, 2013, reference 01, decision is reversed. The claimant quit the employment for good cause attributable to the employer. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs