

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHANE H OBERENDER

Claimant

APPEAL NO. 17A-UI-05719-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALLEMAN CAR CORNER LLC

Employer

OC: 11/20/16

Claimant: Appellant (2)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Shane Oberender filed a timely appeal from the May 22, 2017, reference 04, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Mr. Oberender voluntarily quit on November 15, 2017 without good cause attributable to the employer. After due notice was issued, a hearing was held on June 15, 2017. Mr. Oberender participated. Sue Stevens represented the employer and presented additional testimony through Steve Holland. The hearing in this matter was consolidated with the hearing in Appeal Number 17A-UI-05720-JTT. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits A through J into evidence.

ISSUE:

Whether Mr. Oberender'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: Steve Holland owns Alleman Car Corner, L.L.C. Shane Oberender was employed by Alleman Car Corner, L.L.C., as a full-time truck driver and repossession agent from 2014 until November 15, 2016, when he voluntarily quit. Mr. Oberender quit the employment in response to a pattern of misconduct on the part of the employer whereby the employer regularly deducted from Mr. Oberender's pay court-ordered child support and then failed to forward that money to the State of Iowa in a timely manner or at all. The employer's repeated failure to forward the payment of the child support prompted the State of Iowa to take repeated legal action against Mr. Oberender during the period of the employment. Mr. Oberender's pay had been subject to the garnishment since the beginning of the employment. The employer had received appropriate notice and order regarding its obligation to deduct child support from Mr. Oberender's pay and to forward that money to the State of Iowa. On those occasions when Mr. Oberender spoke to Mr. Holland regarding notice from the State that he was in arrears on his child support and facing sanction, Mr. Holland would write Mr. Oberender a check so that Mr. Oberender could deliver the check to the State to avoid imminent sanction. This happened in August 2015, when Mr. Oberender received a letter from the State of Iowa indicating that he

was \$2,500.00 in arrears on his child support obligation and would not be allowed to renew his driver's license. Mr. Oberender presented the letter to Mr. Holland and Mr. Holland cut him a check for \$2,500.00 without discussion. A similar problem arose in 2016, when state authorities notified Mr. Oberender that he was more than \$2,500.00 in arrears on his child support obligation. During the course of the employment, Child Support Recovery authorities made several attempts to contact Mr. Holland regarding his company's obligation to fulfill the terms of the garnishment order. Mr. Holland avoided that contact and ultimately told the state authority in August 2016 to cease contacting him.

The pattern of financial irregularities on the part of the employer continued to the end of the employment and included the additional problem of delayed payment of Mr. Oberender's November 4, 2017 paycheck due to a purported shortage of cash on hand. When Mr. Oberender spoke to Sue Stevens, Office Manager, on November 8, 2017 about the delayed paycheck, Ms. Stevens told Mr. Oberender that Mr. Holland lacked funds to cover the entire payroll and had given her the choice of receiving her pay or deferring her pay so that Mr. Oberender and the other driver could be paid. Mr. Oberender received the paycheck on November 9, 2017. The employer then withheld Mr. Oberender's final paycheck in its entirety, without notice to Mr. Oberender, for repayment of a purported \$600.00 loan.

REASONING AND CONCLUSIONS OF LAW:

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.

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 213 (Iowa 2005).

The weight of the evidence supports Mr. Oberender's assertion that the employer engaged in a pattern of misconduct that adversely affected Mr. Oberender by failing to forward to the State of Iowa the child support payments that employer regularly deducted from Mr. Oberender's paycheck. The weight of the evidence establishes that Mr. Holland and Ms. Stevens each provided false and misleading testimony during the unemployment insurance appeal hearing. Mr. Holland's assertion that the child support issue was attributable to the State of Iowa failing to process such payments is not credible. Mr. Holland's assertion that he wrote one or more checks to Mr. Oberender as large as \$2,500.00 out of sheer generosity, without any follow up, is not credible. The weight of the evidence indicates instead that the employer was misappropriating the child support garnishment money deducted from Mr. Oberender's pay and

that the \$2,500.00 represented child support deducted from Mr. Oberender's paychecks but not forwarded to the State of Iowa. The weight of the evidence establishes that the employer did also delay payment of Mr. Oberender's wages toward the end of the employment due to the employer lack of cash on hand. The pattern of conduct created intolerable and detrimental working conditions that would have prompted a reasonable person to leave the employment.

Mr. Oberender voluntarily quit the employment for good cause attributable to the employer. Accordingly, Mr. Oberender is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Oberender.

DECISION:

The May 22, 2017, reference 04, decision is reversed. The claimant quit the employment on November 15, 2016 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/scn