IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

WILLIAM L SCHULTE
Claimant

TRINITY STRUCTURAL TOWERS INC
Employer

APPEAL NO: 13O-UI-04624-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/16/12
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving
Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

William L. Schulte (claimant) appealed a representative's January 25, 2013 decision (reference 04) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Trinity Structural Towers, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 5, 2013. The claimant participated in the hearing. Chris Hopwood appeared on the employer's behalf. During the hearing, Exhibit A-1 and Exhibits One and Two were entered into evidence. On March 6, 2013 under appeal number 13A-UI-1322-DT the administrative law judge entered a decision finding the claimant's appeal was not timely. The claimant appealed that decision to the Employment Appeal Board, and on April 17, 2013 the Board reversed the decision and found the appeal to be timely. The Board further remanded the matter to the administrative law judge to make a decision on the merits of the separation. Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held on June 3, 2013. However, since the hearing already conducted on March 5, 2013 had included the testimony on the separation issues, no further hearing is necessary; and a decision should be made on the record created during the March 6, 2013 hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

OUTCOME:

Affirmed. Benefits denied.

FINDINGS OF FACT:

The claimant started working for the employer on March 27, 2012. He worked full time as an assembler on the second shift at the employer's wind turbine base manufacturing facility. His last day of work was December 8, 2012.

On November 27, 2012 the claimant had given the employer a verbal notice of his resignation. He planned his last day of work to be the first or second week of January 2013. His stated reason for leaving was to return to his prior job driving truck over the road. The employer had accepted this resignation. At that time the employer warned the claimant that he would still need to be careful during his notice period that he did not point out under the employer's attendance system, as he had been losing points for such things as leaving early.

Prior to his shift on December 10 the claimant called Hopwood, the human resources manager. He informed her that he would be absent for his shift that evening as he did not have child care for his children, as their mother, who was to have taken custody of them over the weekend, had disappeared, and he had no other childcare arrangement available. He further indicated to Hopwood that he would no longer be able to work on the second shift, and he inquired as to whether there was a first shift job that might be available. Hopwood indicated that there was a quality assurance position up for bid that the claimant could apply for, but that it would be a week or two before the employer would act to fill the position. That appeared to be too long a delay for the claimant, and he did not take any action to apply for that position. He inquired of Hopwood about the possibility of withdrawing his resignation; the employer might have been amenable to allowing the claimant to withdraw his resignation, but did not reach a conclusion on that point because it considered the claimant's employment to have ended before the announced effective date of his resignation.

Under the employer's attendance policy the claimant had at least 4.5 points available as of the end of his probationary period. As of December 8, 2012 he was down to .5 points, primarily due to incidents of leaving early. When the claimant was absent on December 10, his remaining .5 point was used. He was also absent on December 11. On December 11 his supervisor informed him that he was no longer employed.

REASONING AND CONCLUSIONS OF LAW:

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

Rule 871 IAC 24.25 provides that, 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 from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. An employee is not entitled to unilaterally withdraw a resignation that has been accepted by an

employer, and an employer is not obliged to allow an employee to rescind a resignation. *Langley v. Employment Appeal Board*, 490 N.W.2d 300 (Iowa App. 1992). The claimant would be disqualified for unemployment insurance benefits at least as of January 6, 2013 unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Leaving because of a dissatisfaction with the work environment is not good cause. 871 IAC 24.25(21). Quitting to seek other employment where other employment is not obtained is not good cause. 871 IAC 24.25(3). The claimant has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. *O'Brien v. Employment Appeal Board*, 494 N.W.2d 660 (Iowa 1993); *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (FL App. 1973). The claimant has not satisfied his burden. Benefits are denied at least as of January 6, 2013.

The next issue in this case is whether, for the time prior to the effective date of the claimant's announced quit in January 2013, the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law or whether the claimant voluntarily quit for good cause attributable to the employer.

An employee does not have a right to unilaterally make a change in the shift to which the employee has been assigned. When the claimant indicated to the employer on December 10 that he could no longer work on the second shift and when he took no immediate action to apply for a first shift position while continuing to report for his second shift position, the employer reasonably concluded that the claimant was abandoning and quitting his employment. Leaving employment because of a personal need to change the work shift is not a good cause attributable to the employer. 871 IAC 24.25(17), (18). Benefits would be denied as of December 10, 2012.

Alternatively, viewed as a discharge, the result is the same. In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

Excessive and unexcused absenteeism can constitute misconduct. 871 IAC 24.32(7). Absences due to issues that are of purely personal responsibility, including childcare issues, are not excusable. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984); *Harlan v. Iowa Department of Job Service*, 350 N.W.2d 192 (Iowa 1984). The fact that the claimant called in his absence on December 10 does not make the absence excused. The

claimant's final absence was not excused and was not due to illness or other reasonable grounds. The claimant had previously been warned on November 27 that future attendance occurrences prior to the effective date of his quit could result in termination. *Higgins*, supra. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's January 25, 2013 decision (reference 04) is affirmed. The claimant is disqualified from receiving unemployment insurance benefits as of December 10, 2012. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

_____
Lynette A. F. Donner
Administrative Law Judge

_____
Decision Dated and Mailed

ld/css