

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONNA D NORRIS
Claimant

APPEAL NO. 10A-UI-13956-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ALUMINUM CO OF AMERICA
DAVENPORT WORKS**
Employer

OC: 09/05/10
Claimant: Respondent (2-R)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 30, 2010, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on November 18, 2010. Claimant Donna Norris was not available at the number she had provided for the hearing and did not participate. Jorge Rodriguez represented the employer and presented additional testimony through Jeremy Pepper. Exhibits One, Two, and Three were received into evidence.

After the hearing record had closed, the claimant contacted the administrative law judge and provided good cause, based on a faulty cell phone, for not being available for the hearing. The record was reopened and, after due notice was issued, further hearing was held on December 14, 2010. Claimant participated. Jorge Rodriguez represented the employer and presented additional testimony through Jeremy Pepper.

ISSUE:

Whether the claimant's voluntary quit was for good caused attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Donna Norris was employed by Aluminum Company of America-Davenport Works as a full-time coil sheet operator until July 12, 2010, when she voluntarily quit. Ms. Norris worked in the same production area throughout 2010 after returning from a layoff. For no more than a week at the end of the employment, the claimant's immediate supervisor was Lyle Cook. Ms. Norris notified the employer of her quit by leaving a message on a former supervisor's phone. Jeremy Pepper, Coil Finishing Area Manager, listened to that message and telephoned the claimant the next day to confirm whether she indeed intended to quit the employment. The claimant confirmed that she did. The employer asked Ms. Norris to come to the workplace and sign documentation of her resignation. Ms. Norris agreed to do that, but then did not follow through. On July 16, the employer sent a letter by certified mail to Ms. Norris memorializing a July 12, 2010 voluntary quit. Ms. Norris signed for the certified letter on that day, but did not make any further contact with the employer.

Ms. Norris cited two reasons as the basis for her decision to leave the employment. The first was difficulty she was experiencing in learning new computer skills. As a machine operator in the coil finishing area, the claimant was expected to master the machine operator skills associated with several related positions in that area. The claimant received training in several related positions and was essentially still in training at the time she voluntarily quit the employment. The claimant was averse to using computers in the course of performing her work and wanted to stick strictly with manual labor not involving computers. Some of the positions upon which the claimant was trained involved use of the computer and some did not. The second concern the claimant cited for her quit was her concern that a coworker she did not get along with was about to transfer into her work area. The claimant did not cite any concern regarding Mr. Cook at the time she separated from the employment and her relationship with Mr. Cook was not the basis for her voluntary separation from the employment.

The July quit was actually the second time Ms. Norris had notified the employer she was going to quit. In June, Ms. Norris had also notified the employer she was going to quit for the same reasons that prompted the July quit, but then the claimant enlisted the union's assistance to gain the employer's acquiescence in allowing her to return to the employment. Ms. Norris worked only a couple weeks longer before she again separated from the employment.

At the time of separation the employer continued to have work available for Ms. Norris.

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.

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 (Iowa 2005).

On the other hand, when an employee voluntarily quits rather than perform duties as assigned or because the employee cannot get along with other coworkers, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(6) and (27).

The weight of the evidence in the record does not establish any intolerable or detrimental working conditions. The mere fact that the employer asked Ms. Norris to master computer skills

related to her job duties would not create intolerable or detrimental working conditions. Nor did the cross training situation amount to a change in the conditions of the employment. Instead, the cross training arrangement was central to the employment and was not new at the end of the employment. The weight of the evidence indicates that Ms. Norris quit because she was averse to mastering computer skills that were part of her work duties and because of her inability to get along with a coworker. Ms. Norris' voluntarily quit was without good cause attributable to the employer. Accordingly, Ms. Norris is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Norris.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The Agency representatives September 30, 2010, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css

