

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TONYA K HOLMES
Claimant

APPEAL NO. 15A-UI-05787-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARTIN MARIETTA MATERIALS INC
Employer

OC: 12/14/14
Claimant: Respondent (2)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 8, 2015, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant's voluntary quit on April 16, 2015 was for good cause attributable to the employer. After due notice was issued, a hearing was held on June 26, 2015. Claimant Tonya Holmes participated. Stacey Olberding represented the employer and presented additional testimony through Jeff Baldwin and Mark Palo. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One and Two into evidence.

ISSUES:

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

Whether the claimant was overpaid benefits.

Whether the claimant is required to repay benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Tonya Holmes was employed by Martin Marietta Materials, Inc., from 1996 until April 16, 2015, when she voluntarily quit due to unprofessional conduct of other staff and a lack of communication in the workplace. During the last year of the employment, Ms. Holmes worked as a full-time quality control worker. Ms. Holmes' duties in that position involved collecting rock material and testing it in a lab to determine whether it met the employer's specifications. Ms. Holmes' immediate supervisor was Jeff Baldwin, Plant Manager. Ms. Holmes' usual work hours were 7:00 a.m. to 3:00 p.m., Monday through Friday. Ms. Holmes was temporarily laid off from the employment effective December 15, 2014 and returned to the employment upon recall on March 23, 2015. On the morning of April 16, 2015, Ms. Holmes send an email message to

Mr. Baldwin indicating that she was giving two weeks' notice of her voluntary quit. Later that day, Ms. Holmes sent another email message indicating that she was making her quit effective immediately. Ms. Holmes concedes that nothing had happened between March 23, 2015 and April 16, 2015 that contributed to her decision to resign that day.

Ms. Holmes cites incidents that took place on unspecified dates prior to her December 15, 2014 layoff as the basis for her April 16, 2015 resignation. One such incident concerned Mr. Baldwin calling Ms. Holmes to check on a lab test. When Ms. Holmes advised that the specimen in question did not meet quality control requirements, Mr. Baldwin responded with, "Fuck it." The language, while offensive, was not directed at Ms. Holmes, but was instead an expression of frustration that the building material did not meet specifications. Ms. Holmes references another incident wherein Mr. Baldwin, Foreman Mark Palo and one other male staff member were in Ms. Holmes' work area. One of the three passed gas and then all three quickly exited the work area. Immediately thereafter, Ms. Holmes observed the three men laughing and assumed it was about the incident. Ms. Holmes was also concerned that someone was helping themselves to her food and beverages in the refrigerator in her work area. Well before Ms. Holmes was temporarily laid off in December 2014, Ms. Holmes met with Bruce Hanson, Production Manager, about her concerns. Mr. Hanson agreed to address Ms. Holmes' concerns and later directed Mr. Baldwin to mark his words in and conduct in the presence of Ms. Holmes. Though the employer had a written harassment policy and ethics hotline, Ms. Holmes did not utilize the policy or the hotline to bring her concerns to the attention of the human resources personnel or to the attention of anyone else beyond the one meeting with Mr. Hanson.

On the day Ms. Holmes submitted her quit notice, Mr. Baldwin and Stacey Olberding, Human Resources Manager, were in the Mason City area where Ms. Holmes was working. They stopped and met with Ms. Holmes to discuss her quit notice. Ms. Holmes indicated that she was leaving to explore other opportunities. Ms. Holmes acknowledged that she did not like the quality control duties. Ms. Holmes made no reference to issues in the employment that factored in her decision. Ms. Olberding and Ms. Holmes hugged. During the meeting, Mr. Baldwin acknowledged that Ms. Holmes was busy in light of the employer having four plants in operation. After Ms. Olberding and Mr. Baldwin departed, Ms. Holmes sent her second email indicating that day would be her last and that she had been offended by Mr. Baldwin's reference to her being busy.

Ms. Holmes established an additional claim for benefits that was effective April 26, 2015 and received \$3,456.00 in benefits for the eight weeks between April 26, 2015 and June 20, 2015. Ms. Olberding represented the employer at the May 6, 2015 fact-finding interview.

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 (Iowa 2005).

The evidence fails to establish intolerable and detrimental working conditions anywhere close in time to the resignation date. The offending conduct that Ms. Holmes cites as the basis for her quit all occurred weeks or months before she was temporarily laid off in December 15, 2014. Thereafter, Ms. Holmes was temporarily laid off for three months. Ms. Holmes then elected to return to the employment on March 23, 2015. While Ms. Holmes testified to a couple of offensive situations, the phone call and the gas passing episode, neither of those incidents prompted Ms. Holmes to leave the employment close in time to when they occurred. Neither was sufficient to establish intolerable or detrimental working conditions that would have prompted a reasonable person to leave the employment in April 2015.

Ms. Holmes voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Holmes 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 unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid \$3,456.00 in benefits for the eight weeks between April 26, 2015 and June 20, 2015. Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment. The employer's account will be relieved of liability for benefits, including liability for benefits already paid.

DECISION:

The May 8, 2015, 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 claimant was overpaid \$3,456.00 in benefits for the eight weeks between April 26, 2015 and June 20, 2015. The claimant is required to repay the overpayment. The employer's account will be relieved of liability for benefits, including liability for benefits already paid.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs