

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMUEL N WENDT
Claimant

APPEAL NO. 11A-UI-15032-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

O'REILLY AUTOMOTIVE INC
Employer

OC: 10/09/11
Claimant: Respondent (2-R)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 9, 2011, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held on December 14, 2011. Claimant Samuel Wendt did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Eric Creamer, Store Manager, represented the employer. Exhibits One through Four were received into evidence.

ISSUE:

Whether Mr. Wendt'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: Samuel Wendt was employed as a part-time parts specialist at the Muscatine O'Reilly Auto Parts store from April 2010 until July 31, 2011, when he voluntarily quit based on dissatisfaction with the work environment and personality conflicts with coworkers. Mr. Wendt's immediate supervisor was Store Manager Eric Creamer. When Mr. Creamer was away, other more senior staff supervised Mr. Wendt's employment. On the day Mr. Wendt quit, he went to Mr. Creamer's office, tossed his keys on Mr. Creamer's desk and said, "I'm done." When Mr. Creamer asked why, Mr. Wendt said, "Things aren't changing." Mr. Wendt had gone to Mr. Creamer four or five months earlier with complaints about the coworkers who supervised him when Mr. Creamer was away. Mr. Wendt had complained the coworkers were harassing him. At the same time, Mr. Creamer had been receiving calls at home from the other coworkers who asked whether Mr. Wendt could be sent home because he was not performing work. When Mr. Wendt had gone to Mr. Creamer months before, Mr. Creamer said he would address the matter. Mr. Creamer then did not hear any further complaints from Mr. Wendt until the day Mr. Wendt summarily quit.

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).

When an employee voluntarily quits due to inability to work with coworkers, dissatisfaction with the work environment, or a personality conflict with a supervisor, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(6), (21), and (22).

When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

Mr. Wendt did not participate in the hearing and thereby failed to present any evidence to support the assertion that his voluntary quit was for good cause attributable to the employer. The evidence establishes a complaint months before the quit and then a quit without notice without reference to a specific incident or event that prompted the quit. There is insufficient evidence in the record to prove intolerable or detrimental working conditions that would prompt a reasonable person to leave the employment. The evidence establishes a quit due to dissatisfaction with the work environment, including the relationship with coworkers. Mr. Wendt voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Wendt is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Wendt.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times his weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

This employer was Mr. Wendt's primary base period employer. Only \$354.46 cents comes from one other base period employer. Mr. Wendt lacks sufficient wage credits from the other employment to be eligible for unemployment insurance benefits.

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 November 9, 2011, reference 03, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he 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/pjs