

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES A SHAW
Claimant

APPEAL NO. 08A-UI-08336-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOHN KEADY INC
Employer

OC: 08/24/08 R: 04
Claimant: Respondent (2-R)

Iowa Code section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

John Keady, Inc., filed a timely appeal from the September 12, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on October 1, 2008. Claimant James Shaw participated. Sales Manager Rick Tucker represented the employer. Exhibits A and B were received into evidence.

ISSUE:

Whether Mr. Shaw'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: The employer is an auto dealership. James Shaw was employed by John Keady, Inc., as a full-time auto sales person from January 2001 until August 15, 2008, when he voluntarily quit the employment to relocate to Springfield, Missouri. Mr. Shaw had rekindled a relationship with a former girlfriend and decided, during the second week of August, to relocate to Springfield, Missouri, where the girlfriend resided. On August 11, 2008, Mr. Shaw notified Sales Manager Rick Tucker that he would be leaving the employment in two weeks and that his last day would be August 23. Mr. Shaw told Mr. Tucker that he had restarted a relationship with a former girlfriend and had decided to relocate to Missouri to be with the girlfriend. Mr. Shaw did not mention any other reason for his decision to leave his employment. On August 15, Mr. Shaw notified another Sales Manager, Kevin Good, that he was making his quit effective that day. Mr. Shaw then moved to Missouri on August 22 or 23.

Ms. Shaw had several complaints about the employment and about the workplace, but none of these complaints prevented him from continuing in the employment. Mr. Shaw was upset that he sometimes lost customers or referrals to other sales people, though other sales people had expressed similar concerns about Mr. Shaw taking their customers or referrals. The competitive nature of sales work had been the same throughout Mr. Shaw's employment. The employer investigated complaints, but ultimately had to rely upon the integrity of its sales people to properly "qualify" customers they dealt with.

Mr. Shaw had multiple concerns or complaints about his previous sales manager, but that person had left the employer in April or May 2008, at least a few months before Mr. Shaw announced his quit.

On May 12, 2008, Mr. Shaw had gotten into a heated argument with another sales person, Anthony Griffin. After Mr. Shaw left for the day, Mr. Griffin told another sales person, Mike Adams, that Mr. Shaw did not know who he was dealing with and that he could slit Mr. Shaw's throat. While Mr. Griffin was speaking with Mr. Adams, he pulled out his pocket knife. Mr. Adams was sufficiently disturbed by Mr. Griffin's conduct and threat that he notified the dealership management. Mr. Adams told Sales Managers Rick Tucker and Kevin Good that he did not know whether Mr. Griffin was serious. The sales managers met with Mr. Griffin to address the matter and concluded that Mr. Griffin had not been serious. The employer did not discharge Mr. Griffin in connection with this incident. The employer also did not immediately notify Mr. Shaw of Mr. Griffin's conduct. Mr. Adams did notify Mr. Shaw. Mr. Shaw expressed concern to the sales managers, who were not willing to further discuss the matter with Mr. Shaw. The employer eventually discharged Mr. Griffin in July. After the May 12 incident, Mr. Shaw had continued to work at the dealership without further issues with Mr. Griffin.

Mr. Shaw had various other complaints about the workplace.

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).

Where a person voluntarily quits to relocate to a different locality, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(2).

When a person voluntarily quits due to dissatisfaction with the work environment, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(21).

The greater weight of the evidence in the record establishes that Mr. Shaw's voluntary quit was prompted by his desire to move to Missouri to be with his girlfriend. The greater weight of the

evidence establishes that Mr. Shaw was dissatisfied with the work environment and that this dissatisfaction weighed in his decision to relocate to where his girlfriend resided.

The greater weight of the evidence fails to establish intolerable and/or detrimental working conditions that would have prompted a reasonable person to quit the employment. Mr. Shaw's laundry list of concerns and complaints bear hallmarks of an attempt to recharacterize the basis of the quit after the fact. The evidence indicates that Mr. Shaw's concerns about losing sales to other sales people had existed throughout his seven and a half years of employment. Such concerns are common to and inherent in competitive sales environments and did not prevent Mr. Shaw from continuing in the employment for years. The greater weight of the evidence indicates that Mr. Shaw had a legitimate concern about Mr. Griffin's conduct and indirect threat in mid-May. However, the concern dissipated when nothing further happened and the concern did not prevent Mr. Shaw from continuing to work for the employer three additional months, including after Mr. Griffin was no longer in the workplace. The greater weight of the evidence indicates that whatever concerns Mr. Shaw had with his previous sales manager dissipated in April or May when that sales manager left the employer. Again, the concerns did not prevent Mr. Shaw from continuing to work for the employer for several years, including months after that sales manager left the employer.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Shaw voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Shaw 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. Shaw.

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 representative's September 12, 2008, 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 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.

The 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