

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HOLLY L WALDEN

Claimant

APPEAL NO. 15A-UI-01366-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SHAMROCK CARTAGE INC

Employer

OC: 01/04/15

Claimant: Appellant (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Holly Walden filed a timely appeal from the January 26, 2015, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that the claimant had voluntarily quit without good cause attributable to the employer. After due notice was issued, a hearing was held on February 27, 2015. Ms. Walden participated. Mathew Harper represented the employer.

ISSUE:

Whether Ms. Walden'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: Holly Walden was employed by Shamrock Cartage, Inc., as a full-time "yard spotter" from December 28, 2014 until January 9, 2015, when she voluntarily quit the employment. Ms. Walden performed her duties at a warehouse facility in Cedar Rapids that supported production at PepsiCo-Quaker Oats. Ms. Walden's duties involved operating a commercial truck to move freight trailers to and from a dock area that was part of a massive warehouse. The warehouse measured 3.4 miles from corner to corner and had 93 dock doors. The facility's "yard" stretched more than a mile from the warehouse. Ms. Walden's work hours were 5:00 a.m. to 3:30 p.m., Wednesday through Saturday. There were usually two "yard spotter" drivers assigned to a shift. There was a computer monitor inside Ms. Walden's assigned truck. The warehouse would send instructions via the computer monitor to let Ms. Walden know what trailers needed to be moved and where she needed to move them.

Ms. Walden had worked at the same facility in the same capacity as an employee of Worley Transportation immediately prior to being employed by Shamrock Cartage. Shamrock Cartage's contract with PepsiCo-Quaker Oats went into effect on December 28, 2014, upon the expiration of Worley's contract with PepsiCo-Quaker Oats. Worley had held the contract with PepsiCo-Quaker Oats for decades and had invested in a two-way radio communication system that the PepsiCo-Quaker Oats staff, Ms. Walden and others at the warehouse facility used on a daily basis to supplement the computer-based communication. When Worley Transportation's

contract ended, that company took their radio communication system with them. PepsiCo-Quaker Oats, which, like Ms. Walden, has come to rely upon that communication system, eventually went through the appropriate steps to acquire its own radio frequency and two-way radio communication system shortly after Ms. Walden quit the employment.

When Ms. Walden had interviewed in December 2014 for a position with Shamrock Cartage, she had asked whether the new employer intended to make any operational changes. The employer told Ms. Walden that PepsiCo-Quaker Oats was pleased with the work of the yard spotters and that Shamrock Cartage did not intend to make any changes. Ms. Walden asked about whether the new employer would provide a communication system similar to the one she had used while working for Worley Transportation. Shamrock Cartage told Ms. Walden that there would indeed be an analogous communication system. After Ms. Walden started the employment, she was displeased that Shamrock Cartage did not have an analogous communication system in place. Ms. Walden considered the lack of such a system a safety issue, though she carried a personal cell phone while she was at work.

When Ms. Walden raised her concern about the lack of verbal communication system with Matthew Harper, Vice President, Mr. Harper told Ms. Walden that Shamrock Cartage was only responsible for providing drivers and trucks to the warehouse. Mr. Harper told Ms. Walden that the electronic communication device in her truck was the method by which she needed to communicate with the warehouse. That conversation took place on January 9, 2015. When Ms. Walden went to lunch that day, she did not return. The employer learned that Ms. Walden had walked off the job when PepsiCo-Quaker Oats warehouse staff called to inquire why Shamrock Cartage only had one yard spotter working. Ms. Walden subsequently called Mr. Harper and asserted that he had lied to her about the job.

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.

Iowa Admin. Code r. 871-24.26(23) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(23) The claimant left work because the type of work was misrepresented to such claimant at the time of acceptance of the work assignment.

Iowa Admin. Code r. 871-24.25(27) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section

96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(27) The claimant left rather than perform the assigned work as instructed.

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.

The weight of the evidence establishes a voluntary quit without good cause attributable to the employer. Ms. Walden had barely been a week in the employment when she decided to walk off the job due to the absence of a two-way verbal communication system. Ms. Walden knew that Shamrock Cartage's contract with PepsiCo-Quaker Oats was brand new. It was unreasonable for Ms. Walden to expect that all the bugs would be worked out so early in the contractual relationship between the new employer and PepsiCo-Quaker Oats. At the time Ms. Walden quit, PepsiCo-Quaker Oats was taking steps to address the very issue that prompted Ms. Walden's quit. Ms. Walden might have been mildly inconvenienced, but she was not placed at increased risk through the absence of the two-way verbal communication system. She had a personal cell phone on her person while she was at work. The primary work communication system, the computer system, remained in place. Any misrepresentation, intentional or unintentional, that the employer made at the time of the interview regarding the availability of a two-way verbal communication system did not constitute misrepresentation of the *type* of work to be performed and, therefore, did not rise to the level of misrepresentation that would make the quit for good cause attributable to the employer.

Because the quit was without good cause attributable to the employer, Ms. Walden 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.

DECISION:

The January 26, 2015, reference 01, decision is affirmed. 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs