

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFREY J COMSTOCK
Claimant

APPEAL NO. 13A-UI-12260-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

S & L ENTERPRISES INC
Employer

OC: 09/29/13
Claimant: Appellant (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Jeffrey Comstock filed a timely appeal from the October 24, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on November 21, 2013. Mr. Comstock participated. Leona Fogle represented the employer and presented additional testimony through Celeste Clark.

ISSUE:

Whether Mr. Comstock'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: Jeffrey Comstock was employed by S & L Enterprises, Inc., d/b/a True Value, as a full-time appliance salesperson from August 24, 2013 until October 4, 2013, when he voluntarily quit due to what he perceived to be intolerable and detrimental working conditions. Mr. Comstock was paid an hourly wage of \$14.00. Mr. Comstock did not receive a commission. Mr. Comstock's immediate supervisor was Leona Fogle. Ms. Fogle and her husband, Steve Fogle, had just purchased the Centerville True Value store shortly before Mr. Comstock was hired to work at the store. The employer and its staff were still finding their way in the new business venture during Mr. Comstock's employment. Immediately prior to joining S & L Enterprises, Inc., as a True Value employee, Mr. Comstock had been employed by another business owned by the Fogles, Fogle Construction and Excavating, employer account number 351878. Mr. Fogle has spoken to Mr. Comstock about joining the True Value as the appliance salesperson. Specific duties beyond the appliance sales duties were not part of that discussion. The present case deals only with Mr. Comstock's employment with and separation from the True Value position.

While Mr. Comstock's primary duties were appliance sales, Mr. Comstock had other duties in the store. The additional duties including fielding calls from customers with appliance repair needs and assisting with scheduling appliance repair service calls. Mr. Comstock's additional duties also included assisting in other store operations as needed. Mr. Comstock and other male employees were often called upon to assist with lifting heavier items or loading items into customer vehicles. Mr. Comstock resented these lifting duties and viewed them part of gender

discrimination on the part of the employer. The employer, on the other hand, assigned duties to employees based on the employer's perception of employees' abilities. While the employer did assign some lifting duties to female staff, the employer did generally call upon the male staff to perform the bulk of the lifting duties.

Toward the end of the employment, Ms. Fogle asked Mr. Comstock whether he knew of anyone looking for a job, preferably a female. The employer was seeking an additional clerk and believed that a female would be more suited to such duties. Mr. Comstock took this inquiry as yet another indication of the employer's gender discrimination practices. Mr. Comstock did speak up at the time of the inquiry to point out that he found it sexist. Mr. Comstock voluntarily quit without notice immediately after receiving his paycheck midday on October 4, 2013. Mr. Comstock had concluded that he was not well suited for the work.

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).

871 IAC 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.

871 IAC 24.25(21), (22) 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:

(21) The claimant left because of dissatisfaction with the work environment.

(22) The claimant left because of a personality conflict with the supervisor.

While the employer's discussion with Mr. Comstock about the search for a new clerk is problematic and indicates something of a sexist view, that discussion in no way established intolerable or detrimental working conditions for Mr. Comstock. The employer's habit of calling upon male staff to perform the heavier lifting did not indicate gender discrimination or intolerable working conditions. It was reasonable for the employer to enlist those employees capable of performing heavier lifting to perform those tasks. It would have been unreasonable for the employer to enlist employees less capable of performing such tasks when more capable employees, such as Mr. Comstock, were available. Assigning the bulk of the lifting to more physically capable male staff did not amount to gender discrimination. It was unreasonable for Mr. Comstock to think that his duties in the True Value hardware store would be strictly limited to appliance sales. Had Mr. Comstock's employment been commission-based, his argument that he was strictly to be a salesperson might be somewhat stronger. But Mr. Comstock was an hourly employee. As such, a reasonable person would expect that the employer would prioritize and assign tasks as needed to get the base value for the hourly wage the employer was paying Mr. Comstock. In any event, it was not unreasonable for the employer to call upon Mr. Comstock and others to assist with other duties in the hardware store as needed. Such expectations did not substantially change the conditions of the employment. Rather, they were part of the conditions of the employment.

The evidence in the record indicates that Mr. Comstock voluntarily quit the employment after concluding that he was not well suited to the employment. Mr. Comstock's voluntary quit was based in part on general dissatisfaction with the work environment and personality differences with his supervisor. The evidence fails to establish that the employer in any way misrepresented the employment to Mr. Comstock. Mr. Comstock voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Comstock 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.

DECISION:

The Agency representatives October 24, 2013, 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 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs