IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MATT S JOHNSON
Claimant

BUNZL PROCESSOR DISTRIBUTION LLC
Employer

APPEAL NO: 12A-UI-02488-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/22/12
Claimant: Respondent (2/R)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Bunzl Processor Distribution, L.L.C. (employer) appealed a representative's February 28, 2012 decision (reference 01) that concluded Matt S. Johnson (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 28, 2012. The claimant participated in the hearing. Tami Husman appeared on the employer's behalf and presented testimony from one other witness, Jake Woulter. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

OUTCOME:

Reversed. Benefits denied.

FINDINGS OF FACT:

The claimant started working for the employer on December 8, 2008. He worked full time as a warehouse associate at the employer's Eldridge, Iowa facility. His last day of work was July 26, 2011. He voluntarily quit on that date.

The claimant had received some prior discipline for shipping errors, including a final notice given to him on May 31, 2011; if he again exceeded the employer's six allowable monthly errors, he faced discharge. He had asked his manager, Woulter, to keep him apprised as to where he stood on monthly shipping errors; as of July 22, Woulter had advised him he was at five. Another shipping error occurred on July 26, and Woulter had the claimant come into his office to advise him that he was now at six, so there could be no more errors before the end of the month.

The claimant had interpersonal difficulties with a coworker. They had several verbal disputes, and there had been an incident in September 2010 where the coworker had poked the claimant with a finger during a verbal confrontation. There had been another verbal confrontation on July 7, 2011. During the various complaints the two employees had lodged against each other over the years, the claimant had admitted that he himself had intentionally said or done things to irritate the coworker; he was given a disciplinary action in May 2011 for his part in the issues. On July 21 the claimant complained that the coworker had parked his forklift at lunch right beside where the claimant had parked his forklift to charge it over lunch. However, the coworker was leaving for the day at lunch, and the place where he had parked it was the proper place for him to leave it as he would be gone for the rest of the day. On July 22 the claimant complained that the coworker had buzzed by him on the forklift, coming within scant inches of him. Woulter questioned the coworker, who denied he had done so, and he questioned other employees in the area, who also indicated they had not seen any such occurrence. Woulter began to closely monitor the floor to see what the coworker did when the coworker was on a forklift but the claimant was not; he saw no incidents of the coworker bringing the forklift close to the claimant.

About midday on July 26 the claimant came into Woulter's office and Woulter began to advise him about the sixth shipping error. The claimant stopped Woulter and indicated he would just quit. The claimant declined to sign a resignation notice and give a written reason for quitting, so Woulter brought in a witness, to whom the claimant confirmed that he was quitting. The claimant asserts that he told Woulter that the reason he was quitting was not the shipping error, but that he "can't take it anymore" with regard to the problems with the coworker. The claimant testified at the hearing that he was afraid he was going to "get beaten up." However, there was no evidence the coworker had made any verbal threats of physical violence. The claimant asserted that the coworker had "buzzed" by him that morning within a few inches when he was on foot and the coworker was on the forklift. However, he did not report this to Woulter, and Woulter, who had been observing the actions of the coworker on the forklift, saw no such incident.

The claimant established a claim for unemployment insurance benefits effective January 22, 2012. The claimant has received unemployment insurance benefits after the separation.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a coworker is not good cause. 871 IAC 24.25(21), (6). Quitting because a reprimand has been given is not good

cause. 871 IAC 24.25(28). The claimant has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. *O'Brien v. Employment Appeal Board*, 494 N.W.2d 660 (Iowa 1993); *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (FL App. 1973). Rather, his complaints do not surpass the ordinary tribulations of the workplace. The claimant has not satisfied his burden. Benefits are denied.

The unemployment insurance law 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's February 28, 2012 decision (reference 01) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of July 26, 2011, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs