IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JOSHUA J KOPP
Claimant

DUBUQUE MATTRESS INC
Employer

APPEAL NO. 11A-UI-12373-JT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 08/14/11
Claimant: Respondent (2-R)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 13, 2011, reference 03, decision that allowed benefits. After due notice was issued, an in-person hearing was held on October 26, 2011. Claimant Joshua Kopp participated. Doug Dolter, President, represented the employer and presented additional testimony through Alex Engling, Head Producer.

ISSUE:

Whether the claimant'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: Joshua Kopp was employed by Dubuque Mattress, Inc., on a full-time basis from May 2010 until June 7, 2011, when he voluntarily quit the employment in response to the employer's decision to no longer allow him to use the employer's computer system to play video games. Mr. Kopp started the employment as a mattress producer, but eventually was promoted to head producer. Mr. Kopp's beginning wage was $8.50 per hour at the start and was bumped to $9.00 six months in to the employment. In connection with the promotion to head producer, Mr. Kopp transitioned from an hourly wage to an annual salary of $20,000.00. With the promotion, came the responsibility to ensure that all production work was completed in a timely manner. Mr. Kopp's supervisor was Doug Dolter, President. At the time Mr. Dolter began to discuss with Mr. Kopp the possible promotion to head producer, Mr. Dolter told Mr. Kopp that the person currently in that position was making $23,000.00 per year. At the time Mr. Dolter actually promoted Mr. Kopp to head producer, Mr. Dolter told Mr. Kopp that when Mr. Kopp had mastered all of the head producer duties and was able to perform the duties efficiently, Mr. Dolter would begin paying him a $23,000.00 annual salary. Ms. Kopp did not master all of the head producer duties prior to separating from the employment and, therefore, the employer did not increase his salary to $23,000.00.

Mr. Kopp's quit was prompted by the employer's decision to no longer allow Mr. Kopp to use the employer's computer to play video games. For most of the period of employment, the employer allowed Mr. Kopp to use the work computer to play video games on breaks or after hours.

Mr. Kopp utilized this privilege to an extreme and sometimes would stay at the work place until the next morning playing video games. This sometimes resulted in Mr. Kopp being late getting to work. When Mr. Kopp worked late to complete production, his breaks to play video games factored heavily on how long he needed to stay to complete production.

On May 18, 2011, Mr. Kopp was 90 minutes late to work. In response to that incident of tardiness and prior similar incidents, Mr. Dolter told Mr. Kopp that from that point on, there would be no more non-work-related internet use. In response, Mr. Kopp told Mr. Dolter he was giving his two-week notice. Mr. Dolter told Mr. Kopp he accepted the quit notice. At Mr. Kopp's request, Mr. Kopp worked a few days beyond his two-week notice period, but then voluntarily separated from the employer on June 7, 2011.

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(1) 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:
>
> (1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting.

See Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. Id. An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See Olson v. Employment Appeal Board, 460 N.W.2d 865 (Iowa Ct. App. 1990).

The weight of the evidence in the record fails to establish intolerable or detrimental working conditions. The weight of the evidence indicates that the employer notified Mr. Kopp that he would have to master the head producer duties before the employer would bump his salary, but that Mr. Kopp did not master the head producer duties before he voluntarily separated from the employment. The evidence indicates that any excessively long hours at the workplace were based primarily on Mr. Kopp's videogame playing, not unreasonable expectations on the part of the employer.

The weight of the evidence in the record establishes that Mr. Kopp's quit was prompted by a loss of a privilege or perk, but the evidence fails to establish that the video gaming privilege constituted a *condition* of the employment. There was in fact no change in the conditions of employment.

Mr. Kopp voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Kopp 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. Kopp.

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 13, 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