IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JOE D JOHNSON
Claimant

METROGROUP MARKETING SERVICES INC
Employer

APPEAL NO. 10A-UI-13389-VST

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/09/10
Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:
The employer filed an appeal from a representative's decision dated September 16, 2010, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 12, 2010. The claimant participated. The employer participated by Dean Spiez, third shift manager, and Teri Bockting, human resources supervisor. The record consists of the testimony of Joe Johnson; the testimony of Dean Spiez; the testimony of Teri Bockting; and Employer's Exhibits 1 through 2.

ISSUES:

Whether the claimant voluntarily left for good cause attributable to the employer; and

Whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a direct mail manufacturer. There is a manufacturing facility, which is climate controlled, and a warehouse, which is not climate controlled. Both the manufacturing facility and the warehouse are located in Mount Pleasant, Iowa. The claimant was hired on August 17, 1999. His last day of work was August 19, 2010. He quit his job on August 19, 2010. At the time of his voluntary quit, the claimant worked as a stock handler.

The claimant's job as a stock handler required him to supply machines in the manufacturing facility. He would spend approximately 25 percent to 30 percent of his time in the warehouse, depending on which machine he was required to supply. The claimant preferred to use a powered hand pallet jack although the job was designed for a hand jack. A powered jack was not always available for the claimant's use. The powered jacks were on a first come, first serve basis.

The week that the claimant quit was hot and the claimant did not like working in the warehouse, as it was not air conditioned. He had difficulty doing the job unless he had a power jack. He never complained to management about the heat or the unavailability of a power jack. On August 19,

2010, he turned in his badge and said he had had enough. Work was available for the claimant at the time he quit.

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.

871 IAC 24.25(21) 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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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 evidence is uncontroverted that it was the claimant who initiated the separation of employment. He intended to sever the employment relationship and did so by turning in his badge and telling his employer that he had had “enough.” The issue, therefore, is whether the claimant quit for good cause attributable to the employer.

The claimant testified that he did not like working as a stock handler. He was assigned this job after another employee died. He worked from March 2010 until August 19, 2010, as a stock handler. The claimant wanted to be a machine operator. The immediate circumstances that led to the claimant’s decision to quit appear to be the actual conditions in the warehouse that week. It was hot and the claimant did not always have a power jack to do his job. He felt he had too much to do and that given his age, 62 years, and his health, high blood pressure, he could not work in the heat. No physician advised the claimant to quit. The claimant never complained to management about the conditions or requested a different assignment. He simply quit his job.

Although the claimant may have had good personal reasons for quitting his job, these reasons are not good cause attributable to the employer. Dissatisfaction with the working environment is not good cause attributable to the employer. The claimant never asked his employer for a different assignment or expressed concerns about his health. He never gave his employer an opportunity to address the problem. The conditions may not have been ideal, but the claimant had worked in this job since March 2010, and for the employer since 1999. There was no evidence that working conditions had drastically changed. Accordingly, the claimant quit without good cause attributable to the employer. Benefits are denied.

The next issue is overpayment of benefits.

Iowa Code section 96.3-7, as amended in 2008, provides:

> 7. Recovery of overpayment of benefits.
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> a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.
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> b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.
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> (2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The overpayment issue is remanded to the claims section for determination.

DECISION:

The representative's decision dated September 16, 2010, reference 01, is reversed. Unemployment insurance benefits shall be withheld until 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.

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Vicki L. Seeck
Administrative Law Judge

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Decision Dated and Mailed

vls/kjw