

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAWN J PARMENTER
Claimant

APPEAL NO. 11A-UI-03784-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY CARTON COMPANY
Employer

**OC: 02/20/11
Claimant: Respondent (2R)**

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

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated March 18, 2011, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 13, 2011. Claimant participated. Brein Oswald was a witness for the claimant. Employer participated by Jennifer Humphrey, Human Resources Director. The record consists of the testimony of Shawn Parmenter; the testimony of Brein Oswald; the testimony of Jennifer Humphrey; and Employer's Exhibits 1-4.

ISSUE:

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 receives materials and then sorts, bails and ships those materials to customers for recycling. The claimant was hired on August 12, 2010, as a material handler. He was a full-time employee. The claimant's last day of work was February 10, 2011. On February 11, 2011, the claimant's supervisor, Greg Eshelmann, found a note from the claimant. The note, which was signed by the claimant, said he was quitting. (Exhibit 1) No explanation was given although the claimant said in the note he would explain later.

The claimant's reason for quitting his job was his dislike for his supervisor, Greg Eshelmann. The incident that immediately preceded the claimant's decision concerned an email from Greg to Kevin, who was Greg's boss. The claimant had asked about some old tires that were sitting around the facility. The claimant wanted to purchase them if the tires were for sale. Greg sent an email to Kevin about the tires. The claimant happened to see the email, which mentioned his

name. The email had something to do with the tires. The claimant interpreted the email as Greg saying that he (the claimant) was stupid.

The claimant had received some write-ups for lack of effort and for talking with other employees who worked in the waste management section. The claimant did talk to Kevin about his problems with Greg on one occasion. This conversation took place approximately two weeks after the claimant started working for the employer. The claimant never contacted human resources. Jennifer Humphrey, the director of human resources, has no record of a complaint ever being made about Greg or his management style.

Work was available for the claimant at the time he quit his job.

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) and (22) provide:

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.

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 in this case established that it was the claimant who initiated the separation of employment. The claimant decided to quit his job and left a note saying he was quitting. He gave no reason to his employer for quitting. He stopped coming to work. The claimant intended to sever the employment relationship and his action are evidence of that intent.

The issue, then, is whether the claimant voluntarily left with good cause attributable to the employer. The claimant quit his job because he did not like working for Brian, his supervisor. The incident that immediately preceded his resignation was an email that was not addressed to

the claimant but which the claimant looked at on the computer. The claimant could not recall what the email said but he felt that Greg was calling him “stupid” in the email. He admitted that the email did not use those explicit words.

The administrative law judge asked for specific examples and dates of incidents that occurred with Greg and the claimant. The claimant called Greg “mean and degrading.” He was critical of how the claimant was loading and unloading trucks. He also gave the claimant some written warnings on work effort. One time Greg called the claimant a “dumb ass.” The claimant made only one complaint about Greg to Kevin, who was next in the chain of management. The claimant never complained to human resources.

After carefully considering all of the evidence in this case, the administrative law judge concludes that the claimant has failed to show that he had good cause attributable to his employer for his resignation. Although Greg may have had some shortcomings as a manager, the record fails to show that Greg’s conduct was so egregious that the workplace could be deemed detrimental to the claimant. The claimant did not avail himself of assistance from upper management or human resources in dealing with Greg. He gave no reason for his quitting at the time he left the note. Since the claimant voluntarily left 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.

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.

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.

(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 decision of the representative dated March 18, 2011, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. The overpayment issue is remanded to the Claims Section for determination.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vlS/css