IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

TIMOTHY WAGNER
Claimant

PETE HARKNESS CHEVROLET BUICK
Employer

APPEAL NO. 17A-UI-01172-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/08/17
Claimant: Appellant (2)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Timothy Wagner filed a timely appeal from the January 30, 2017, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Mr. Wagner voluntarily quit on November 14, 2016 without good cause attributable to the employer. After due notice was issued, a hearing was held on February 21, 2017. Mr. Wagner participated. Steve Bunch represented the employer and presented additional testimony through Steve Marlin. Exhibits A through D were received into evidence.

ISSUE:

Whether Mr. Wagner'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: Pete Harkness Chevrolet Buick is an auto dealership located in Centerville. Timothy Wagner was employed by the dealership as a full-time mechanic until November 14, 2016, when he voluntarily quit due to safety concerns, due to the handling of a worker's compensation claim arising from his workplace injury, and due to irregularities related to his pay. Mr. Wagner had begun the employment as a Lube Tech. His starting pay was $12.00 per hour. In June 2016, Steve Bunch, General Sales Manager, promoted Mr. Wagner to a full-time service tech position. Mr. Bunch told Mr. Wagner that his pay in the new position would be $15.00 per hour. However, Mr. Wagner's paycheck did not begin to include the increased wage until the end of July 2016.

Mr. Wagner thereafter encountered additional irregularities with his pay and pay stubs. The paystub that Mr. Wagner received on September 30, 2016 for the work week that ended September 24, reflected an hourly wage of $5.56 and an 80.70 hour work-week. Both of these figures were bogus figures used by the employer's payroll department in an attempt to remedy a problem with Mr. Wagner's September 23, 2016 paycheck for the work week that ended September 17, 2016. On the September 23 paycheck, the employer had underpaid Mr. Wagner for $1.36 per hour for a 40-hour work week. The total amount of the underpayment for that week was $54.40. During the work week that ended September 24, Mr. Wagner worked 26.3 hours and took two unpaid days off for medical appointments. Mr. Wagner's correct wages for the 26.3 hours of work performed during the work week that ended September 24 were $394.50. The employer added the previously underpaid amount of $54.40 to the September 30 paycheck to arrive at the total wages of $449.90. The payroll department's reason for including

80.70 hours as the number of hours worked during the work week that ended September 24 remains a mystery. Mr. Wagner questioned the accuracy of the September 30 paycheck when he received it. Mr. Bunch looked into the matter and then assured Mr. Wagner that the paycheck was accurate. Mr. Bunch attempted to walk Mr. Wagner through the math involved in issuing the September 30 paycheck, but Mr. Wagner continued under the belief that he had been underpaid for his work.

Mr. Wagner again encountered an irregularity in the paycheck the employer issued to him on October 14, 2016 for the work week that ended October 8 referenced an incorrect regularly hourly wage of $14.89. The paycheck referenced 40 hours of regular work and four hours of overtime pay at a rate of $22.50, which is 1.5 times $15.00. Mr. Wagner brought his concern with the paycheck to Mr. Bunch's attention. Mr. Bunch agreed to look into the matter, but did not discuss the matter further with Mr. Wagner. Mr. Wagner continued under the belief that the employer had shorted him on his pay.

On October 13, 2016, Mr. Wagner suffered a workplace injury when he got a piece of metal in his eye while performing cutting, welding and grinding on a vehicle alignment rack. Mr. Wagner initially thought he just had a piece of dirt in his eye. The service department's emergency eye wash station had been nonfunctional since Mr. Wagner began his employment. Mr. Wagner's immediate supervisor, Service Advisor Steve Marlin, was aware that the eye wash station was non-operational. Mr. Marlin noted Mr. Wagner's red and irritated eye on October 13. Mr. Wagner told Mr. Marlin that he thought he had a piece of dirt in his eye. Mr. Wagner told Mr. Marlin that he would use the eye wash station, but it was "a soap dish." On October 14, Mr. Wagner notified Mr. Marlin or the other service advisor that he still had something in his eye and needed to go to the doctor to have it removed. Mr. Wagner's wife had noticed the piece of metal in Mr. Wagner's eye.

At 7:55 p.m. on Saturday, October 15, Mr. Wagner sent a text message to Mr. Bunch. Mr. Wagner told Mr. Bunch about his injury and about his need to seek medical treatment. Mr. Wagner was enroute to the emergency room when he sent the text message to Mr. Bunch. Mr. Wagner asked in his text message whether the employer wanted him to proceed with the matter as a worker's compensation issue or whether the employer wanted him to use his private health insurance. Mr. Bunch did not immediately respond. Instead, Mr. Bunch forwarded Mr. Wagner's text message to the business owner, Pete Harkness. At 9:56 p.m. Mr. Wagner sent another text message to Mr. Bunch, advising that he needed to have the piece of metal in his eye removed. At 10:33 p.m., Mr. Harkness sent a text message to Mr. Bunch so that Mr. Bunch could forward the message to Mr. Wagner. Mr. Harkness wrote:

> Hope you're okay. If your eye's bugging you, please go to the doctor. Please give me their number so I can figure to pay or send to worker's comp. I hope you were wearing goggles as required. Let me know. Pete. Keep me informed. Glad you saw a doctor.

Mr. Wagner sought treatment at the emergency room, but the emergency room physician referred him to an ophthalmologist for removal of the piece of metal from his eye. Mr. Wagner is covered by his wife's health insurance policy and used that policy to pay for the services he received at the emergency room. On Monday, October 17, 2017, a local ophthalmologist removed the metal piece from Mr. Wagner's eye and referred him to Wolfe Clinic for further treatment.

On the morning of October 17, 2016, Mr. Wagner brought a medical excuse to the workplace to support his continued need to be off work. Mr. Wagner spoke to Mr. Harkness, who told Mr. Wagner not to worry and that the employer would "take care of everything." While Mr. Wagner was at the workplace, he learned of a meeting that Mr. Bunch had scheduled to address workplace safety. Mr. Wagner returned to the workplace to participate in the meeting.

At the meeting, Mr. Bunch spoke of his own work-related eye injury decades earlier. Subsequent to Mr. Wagner's eye injury, the employer repaired the eye wash station.

Later that week, Mr. Wagner subsequently went to the referral appointment at Wolfe Clinic and was prescribed an antibiotic and a steroid to further address his eye injury and related vision impairment. Mr. Wagner's personal health insurance covered the Wolfe Clinic appointment and Mr. Wagner and his wife paid the copayment for that appointment. Mr. Wagner continued to need weekly follow up visits with the ophthalmologist who had referred him to Wolfe Clinic. Mr. Wagner returned to work on or about October 24, 2016. Mr. Wagner spoke to Mr. Harkness upon his return. Mr. Harkness was displeased that Mr. Wagner had been referred to Wolfe Clinic and told Mr. Wagner that the employer would not pay for that referral. Mr. Harkness told Mr. Wagner that the matter would thereafter have to be treated as a workers' compensation matter.

Mr. Wagner voluntarily quit the employment on November 14, 2016 in response to receiving worker's compensation reimbursement that was limited to payment for one day's lost wages. Mr. Wagner learned that the reimbursement had been limited to one day's wages because of the employer's delay in reporting the matter to the worker's compensation insurance carrier. Mr. Wagner was angry with the employer's handling of matters related to his October 13, 2016 injury and concluded that the workplace environment was unsafe. November 14 happened to be the first day on the job for the employer's new General Manager, Kyle Curtis. At about 11:00 a.m. on November 14, Mr. Wagner notified Mr. Curtis that he was getting his truck, loading his tools and quitting. Mr. Wagner asked Mr. Curtis to pass that information along to Mr. Bunch. Mr. Wagner did indeed load his tools and depart from the workplace four hours into his shift.

Mr. Wagner became aware during the course of his employment that the employer had neglected repair of vehicle hoists and that this represented a safety risk. When the employer had the hoists inspected, the inspection revealed multiple issues that led the employer to conclude it would be less expensive to replace the hoists.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

Iowa Admin. Code r. 871-24.26(2) 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:
>
> (2) The claimant left due to unsafe working conditions.

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 213 (Iowa 2005).

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 weight of the evidence in the record establishes a voluntary quit for good cause attributable to the employer. The final straw for Mr. Wagner was the employer's mishandling of the worker's compensation aspect of his workplace injury. Mr. Wagner learned on or about the day of his quit that because the employer had delayed initiating the claim, Mr. Wagner would receive greatly reduced compensation for the loss he incurred in connection with the workplace injury. The weight of the evidence establishes that the employer intentionally misled Mr. Wagner into using his private insurance to address the workplace injury in an effort to avoid reporting the injury to the employer's worker's compensation carrier. The employer assured Mr. Wagner that the employer would make him whole, but then reneged of that representation after the employer learned of the Wolfe Clinic consult. The weight of the evidence also supports Mr. Wagner's assertion that the workplace was unsafe. This was illustrated by the absence of an operational eye wash sink until after Mr. Wagner suffered injury and was unable to use the sink. This was also illustrated by the state of disrepair relating to the vehicle lifts or hoists. While Mr. Wagner may not have suffered actual financial loss in connection with the pay stub irregularities in September and October, these irregularities and the employer's failure to respond to the second incident would have caused a reasonable employee to wonder whether the employer was cheating him on his pay.

Because the administrative law judge concludes that Mr. Wagner's voluntary quit was for good cause attributable to the employer, Mr. Wagner is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The January 30, 2017, reference 01, decision is reversed. The claimant quit the employment for good cause attributable to the employer. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

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James E. Timberland
Administrative Law Judge

_____
Decision Dated and Mailed

jet/rvs