

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN T WALTERS

Claimant

APPEAL NO. 07A-UI-03901-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OFFICE DEPOT

Employer

**OC: 06/04/07 R: 04
Claimant: Appellant (1)**

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

John Walters filed a timely appeal from the February 16, 2007, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on July 25, 2007. Mr. Walters participated and was represented by Attorney Natalia Blaskovich. Ken Borzym, Store Manager, represented the employer and presented additional testimony from Ryan Gunderson, Assistant Store Manager. Exhibits A, B and One were received into evidence.

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: John Walters was employed by Office Depot as a full-time Store Support Manager from June 28, 2006 until January 19, 2007, when he voluntarily quit. On November 28, the employer issued Mr. Walters a written warning. The reprimand was based on a recent store audit that found deficiencies in one or more areas for which Mr. Walters was exclusively or jointly responsible. The written warning indicated that Mr. Walters needed to improve operations in his assigned areas so that those areas would score 100 percent in the subsequent store audit. The warning indicated that Mr. Walters would face a "Final Warning" if he failed to demonstrate expected improvement.

Mr. Walters had commenced the employment with minimal computer skills. Mr. Walters' responsibilities required frequent use of computers or computer-related technology. Mr. Walters' lack of computer skills greatly hindered his ability to effectively perform his duties. The employer had provided Mr. Walters with additional training and support, and had adjusted Mr. Walters' duties, to assist Mr. Walters in mastering his assigned duties.

Mr. Walters had suffered an injury early in the employment, but had substantially recovered at the time he notified the employer of his quit. The employer had accommodated Mr. Walters' medical restrictions.

On December 19, Mr. Walters notified Store Manager Ken Borzym that he would be quitting the employment effective January 19, 2007. Mr. Walters was concerned that he would not be able to improve his performance so that his areas would score 100 percent on the next store audit. Mr. Walters had erroneously concluded that warning issued on November 28 was itself a final warning and erroneously concluded that he faced imminent discharge. Mr. Walters decided to quit the employment to avoid being discharged upon the next unsuccessful store audit. Mr. Borzym requested that Mr. Walters reduce his resignation to writing and Mr. Walters provided a resignation letter. In the resignation letter, Mr. Walters cited "technology" as the reason for his quit. The employer accepted Mr. Walters' resignation and Mr. Walters worked through January 19, 2007. The employer had not asked Mr. Walters to leave the employment.

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.

Where a claimant left the employment because the claimant felt that the job performance was not to the satisfaction of the employer, but the employer had not requested the claimant to leave and continued work was available, the claimant's quit is presumed to be without good cause attributable to the employer. 871 IAC 24.25(33). Where a claimant quits in response to a reprimand, the quit is presumed to be without good cause attributable to the employer. 871 IAC 24.25(28).

The evidence in the record indicates that Mr. Walters voluntarily quit the employment because he believed he was unable to perform to the employer's expectations. The employer had not requested that Mr. Walters leave the employment and continued to have work available to Mr. Walters. Though the employer had issued a written warning to Mr. Walters regarding the need to improve his performance, the warning indicated on its face that further performance deficiencies would result in the issuance of yet another warning. The employer did not compel Mr. Walters to quit or be discharged from the employment.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Walters voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Walters 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. Walters.

DECISION:

The Agency representative's February 16, 2007, reference 02, decision is affirmed. 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs