

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RODNEY R TUITJER
Claimant

APPEAL NO. 11A-UI-04268-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

**OC: 02/27/11
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated March 25, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 28, 2011. Claimant participated. Employer participated by Troy Franke, plant manager—Shell Rock Concrete. The record consists of the testimony of Rodney Tuitjer; the testimony of Troy Franke; and Claimant's Exhibit A.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

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 operates a manufacturing facility in Shell Rock, Iowa, that produces concrete blocks used in landscaping. The claimant had been employed at this facility for a number of years before it was purchased by Menard in 2008. The claimant was a machine operator and then was promoted to assistant manager. As an assistant manager he earned \$14.75 per hour.

On or about December 22, 2010, the claimant asked to step down as an assistant manager and return to a regular production employee. This decision was voluntary on the part of the claimant. He knew he would take a decrease in pay. The decrease in pay was \$12.45 per hour. The claimant did not feel that this was fair.

On January 2, 2011, the claimant was working the night shift. One of the most important parts of the plant is a belt that moves sand to the mixer. This belt is approximately four foot wide and thirty feet long. The belt had torn and just been replaced. Troy Franke, plant manager, told another manager that the claimant was supposed to watch the new belt and make sure it was operating properly. The new belt was not tracking quite right and the claimant assumed that when Mr. Franke examined it, that he (the claimant) would get yelled at and probably fired. The

claimant did not want to deal with Mr. Franke. He decided to leave at approximately 5:30 a.m. He left the workplace and never returned.

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.

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 is uncontroverted that it was the claimant who initiated the separation of employment. The claimant testified that he walked off the job on January 2, 2011. The issue is whether the claimant quit his job for good cause attributable to the employer.

The claimant left his job because he was unhappy over a reduction in pay he took when he stepped down from his assistant manager job to a regular production job. The claimant said he asked for the demotion because he was tired of being held responsible for things that went wrong when it was not his fault. Mr. Franke testified that the claimant no longer wanted the pressure of managing a shift. The claimant knew he would take a reduction in pay but he felt that the reduction from \$14.75 per hour to \$12.45 per hour was unfair as he would be doing the "same job."

His other reason for leaving was that he no longer wanted to deal with Mr. Franke. According to the claimant, Mr. Franke treated him in an unprofessional manner by yelling and screaming at him and using profanity in front of other employees. Mr. Franke said that he did raise his voice when talking to the claimant but only because the plant was loud and hearing protection had to be worn. He denied using profanity. The claimant thought he might be terminated because a new concrete belt had been installed and was not tracking quite right. He felt that when Mr. Franke saw the belt that he would be subjected to yelling and screaming and he did not want to go through that.

After carefully weighing the testimony in this case, the administrative law judge concludes that the claimant has not carried his burden of proof to show that he left for good cause attributable to the employer. Concerning the pay issue, the claimant asked for a voluntary demotion and knew that his hourly pay would be reduced. He was not happy about the amount of the reduction. The claimant can hardly claim that there was a substantial change in his contract of hire when he was the party that asked for the demotion. It would be unreasonable to assume that if you leave a management position and go to a production position that there would not be a reduction. The time to ask about the reduction was before requesting the demotion, not after.

Mr. Franke was likely a demanding supervisor but there is insufficient evidence to conclude that his actions rose to the level of harassment that would make the workplace hostile or detrimental. The claimant was asked several times to give specific examples and use of language. The only

example he could give was when Mr. Franke asked him and another employee to go back into the plant. Mr. Franke admitted he did raise his voice because the plant was loud but denied using profanity. The claimant only made one complaint about Mr. Franke to upper management and he was not even certain when that was made.

The evidence fails to show that the claimant voluntarily left for good cause attributable to the employer. Benefits are denied.

DECISION:

The decision of the representative dated March 25, 2011, reference 01, is affirmed. 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.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs