IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

GREGORY D VANHORN
Claimant

D C TAYLOR CO
Employer

APPEAL NO. 07A-UI-09355-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 08/26/07 R: 03
Claimant: Appellant (2)

Section 96.5(1) – Voluntary Quit
871 IAC 24.26(4) – Intolerable and Detrimental Working Conditions

STATEMENT OF THE CASE:

Gregory Vanhorn filed a timely appeal from the September 24, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 22, 2007. Mr. Vanhorn participated. Wielka Cosgrove, Claims Administrator and Human Resources Assistant, represented the employer. Exhibits A and B were received into evidence.

ISSUES:

Whether the claimant's voluntary quit was for good cause attributable to the employer.

Whether the claimant quit in response to intolerable and/or detrimental working conditions that would have prompted a reasonable person to quit the employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Gregory Vanhorn was employed by D C Taylor Company as a full-time roofer from September 7, 2004 until August 21, 2007, when he voluntarily quit. Mr. Vanhorn's immediate supervisor was Foreman Mike Banghart. Superintendent Bob Stander also supervised Mr. Vanhorn's work. On August 21, Mr. Vanhorn, Mr. Banghart and Mr. Stander worked together and with others on a commercial roofing project. Mr. Vanhorn reported for work at 5:30 a.m. As the sun came up, Mr. Vanhorn commenced tying roofing materials and/or equipment onto a hoist so that workers on the roof could hoist the items to the roof.

Mr. Vanhorn noted that there was no drinking water visible at the job site. It was a hot August day. Mr. Vanhorn routinely worked with Mr. Banghart and knew that securing sufficient drinking water was usually one of the first matters that would be attended to at the beginning of the workday. The employer had three and five-gallon water coolers it maintained for this purpose. Water would ordinarily be hauled off to the roof before any other work began. When Mr. Stander sent Mr.Vanhorn to purchase gas, Mr. Vanhorn purchased two gallons of water so that there would be some water present at the work site.

Mr. Vanhorn returned to the work site and spoke to Mr. Stander about the lack of drinking water. Mr. Stander told Mr. Vanhorn that he did not have time to worry about the water and that they needed to get the old roofing material torn off. There was a drinking fountain inside the building that was being re-roofed, but in order to access that water, employees had to descend from the roof, enter the building and locate a water fountain. Because employees working in the hot sun would need to drink a large amount of water to stay hydrated, employees would have to carry cups into the building with them. This was an inefficient method of making water available to the employees who were working on the roof and created a disincentive for Mr. Vanhorn and others to leave their work to locate water.

Mr. Vanhorn worked on the roof for two hours in the hot sun before he went inside the building to get a glass of water. Soon thereafter, Mr. Vanhorn vomited. Mr. Vanhorn was experiencing heat exhaustion. Mr. Vanhorn is 46 years old, has 16 years experience in the roofing industry, and had not previously experienced heat exhaustion. While Mr. Vanhorn was feeling ill, Foreman Mike Banghart approached Mr. Vanhorn, raised his hands in the air, yelled at Mr. Vanhorn and walked away. Mr. Vanhorn continued to feel sick and left the work site at 11:30 a.m. Mr. Vanhorn did not speak with Mr. Stander or Mr. Banghart before he left. No one else at the job site experienced the exhaustion that day.

Mr. Vanhorn did not appear for work on August 22. On August 23, Mr. Vanhorn notified Human Resources Assistant Wielka Cosgrove that he had become "overheated" on August 21 and was still not feeling well. Ms. Cosgrove asked Mr. Vanhorn if he wanted her to schedule an appointment with the employer's health care provider, St. Luke's Work Well Clinic. Mr. Vanhorn indicated he did. On August 23, Mr. Vanhorn was seen at the Work Well Clinic and was diagnosed with heat exhaustion. The doctor issued temporary medical restrictions that prohibited Mr. Vanhorn from performing "high heat work" until August 30, 2007. After the appointment, Ms. Cosgrove spoke with a Work Well Clinic nurse who advised that Mr. Vanhorn had been offered a post-accident drug screen but had declined. The nurse reported to Ms. Cosgrove that Mr. Vanhorn had said he no longer worked for the employer.

Pursuant to United States Department of Labor Occupational Safety & Health Administration (OSHA) regulations, the employer was required to provide an adequate supply of drinking water at the job site. According to information provided at the OSHA website, Mr. Vanhorn's construction work, outside in heat, placed him at risk of heat stress and heat exhaustion, and made it especially important that the employer provide sufficient drinking water. The OSHA materials indicate that vomiting in connection with heat exhaustion is indicative of a severe case of heat exhaustion that may require longer treatment under medical supervision.

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.

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 (Iowa 2005).

The greater weight of the evidence in the record indicates that the employer created intolerable and detrimental working conditions on August 21, 2007 by failing to follow its own practice of providing adequate drinking water on the roof at the commercial roofing job site. The greater weight of the evidence in the record indicates that the employer viewed progress on the roofing project as more important than the safety and welfare of its employees. The greater weight of the evidence in the record indicates that Mr. Vanhorn's heat exhaustion was a direct result of the employer's failure to provide readily available and adequate drinking water to the employees who were working on the roof. The evidence indicates that Mr. Vanhorn quit in response to the intolerable and detrimental conditions created by the employer. A reasonable person may very well have been prompted to quit the employment in response to the lack of water and the employer's disregard for the welfare of its employees. The administrative law judge notes that testimony from Mr. Stander and Mr. Banghart was conspicuously absent from the hearing.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Vanhorn voluntarily quit the employment for good cause attributable to the employer. Accordingly, Mr. Vanhorn is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Vanhorn.

DECISION:

The Agency representatives September 24, 2007, 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

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Decision Dated and Mailed

jet/pjs