

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALICIA A RICHARDSON-FORTNER
Claimant

APPEAL NO. 13A-UI-09763-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARKETLINK INC
Employer

OC: 07/21/13
Claimant: Respondent (4-R)

Iowa Code Section 96.5(1) – Voluntary Quit
871 IAC 24.27 – Voluntary Quit of Part-time Employment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 13, 2013, reference 02, decision that allowed benefits. After due notice was issued, a hearing was started on September 27, 2013. The hearing continued on October 15, 2013 and concluded on October 25, 2013. Claimant Alicia Richardson-Fortner participated and presented additional testimony through Leo Kanne and Andrew Williams. Michelle Chaney represented the employer and presented additional testimony through Deb Luetje, Deb Riessen, Stacy Cook and Bob Beaman. Exhibits 1 through 16, 18 through 22 and A through O were received into evidence.

The parties stipulated that the employer participated in the fact-finding interview that led to the August 13, 2013, reference 02, decision that allowed benefits.

ISSUE:

Whether Ms. Fortner-Richardson'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: Alicia Richardson-Fortner was employed by MarketLink, Inc., as a part-time telemarketing sales rep from 2011 until July 5, 2013, when she voluntarily quit after a failed attempt to unionize the workplace. Deb Luetje was Ms. Richardson-Fortner's immediate supervisor.

Beginning in May 2013, Ms. Richardson-Fortner and two coworkers spearheaded an attempt to unionize the MarketLink call center in Carroll. The employer mounted a vigorous anti-union campaign. The employer engaged in some practices that prompted the involvement of the National Labor Relations Board. The employer went to a location and surveilled employees as they were participating in an informational meeting directly related to the effort to install the union. The NLRB found that the employer had denied Ms. Richardson-Fortner the opportunity to train employees and associated pay based on her involvement in trying to unionize the workplace. Michelle Chaney, Call Center Manager, had on one occasion specifically directed

that a new employee not be placed with Ms. Richardson-Fortner and had said it was to prevent Ms. Richardson-Fortner was persuading the new employee to support the union. The employer had rearranged the seating assignments in the workplace so as to move Ms. Richardson-Fortner away from some pro-union employees. During the period that included the campaign to unionize the workplace, Ms. Riessen issued a reprimand to Ms. Richardson-Fortner for throwing an object to a coworker after Ms. Luetje had directed employees to cease throwing items on the call center floor. In the days leading up to the July 3 vote on the union, the employer allowed Ms. Richardson-Fortner to take time off for her wedding preparations and other personal matters.

The employees' rejected unionization by a vote taken on July 3, 2013. Immediately following the vote, the employer attempted to reconcile with pro-union employees. The employer was shut for the holiday on July 4, 2013. The employer reopened on July 5, 2013. On that morning, Ms. Richardson-Fortner dropped a coworker off and then departed from the workplace without speaking to her supervisor or another member of management. Ms. Richardson-Fortner had decided not continue in the employment. Several other pro-union members, including one of the employees who assisted with spearheading the attempt to unionize the workplace continued in their employment. On the same day Ms. Richardson-Fortner decided not to continue in the employment. The company president was at the workplace speaking to employees in an effort to reconcile and move forward.

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 weight of the evidence fails to establish intolerable or detrimental working conditions that would have prompted a reasonable person in Ms. Richardson-Fortner's circumstances to leave the employment. The weight of the evidence indicates instead that Ms. Richardson-Fortner was uncomfortable with the notion of continuing in the employment after her leading role in the pro-union campaign. The weight of the evidence fails to establish that the employer threatened or intimidated Ms. Richardson-Fortner into leaving the employment. The weight of the evidence

establishes that the employer was willing to let the moment pass, move beyond the union vote, and get back to the business at hand. Ms. Richardson-Fortner's decision to leave stands in stark contrast to decisions her coworkers made to continue in the employment. There is insufficient evidence in the record to indicate that Ms. Richardson-Fortner would have been treated any differently than other pro-union employees who remained with the employer after the union vote. While Ms. Richardson-Fortner and her union-representative witnesses speculated at the hearing about what might have happened had Ms. Richardson-Fortner stayed in the workplace, that speculation is insufficient to establish actual intolerable and detrimental working conditions. Instead, the evidence establishes that Ms. Richardson-Fortner left the employment due to dissatisfaction with the workplace after the failed union vote.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Richardson-Fortner voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Richardson-Fortner is disqualified for benefits based on wages earned through this employment until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. Because the employer participated in the fact-finding interview, the employer's account shall not be charged for benefits paid to Ms. Richardson-Fortner. See Iowa Code section 96.3(7)(b)(1)(a).

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times her weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

In other words, Ms. Richardson-Fortner remains eligible for benefits based on wages from base period employment other than MarketLink, Inc., provided she meets all other eligibility requirements. This matter will be remanded for redetermination of Ms. Richardson-Fortner's eligibility for reduced benefits. That redetermination may lead to a decision that Ms. Richardson-Fortner has been overpaid benefits.

DECISION:

The agency representatives August 13, 2013, reference 02, decision is modified. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in a been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

This matter is remanded for redetermination of the claimant's eligibility for reduced benefits based on base period wage credits from employment other than the employment at issue in this matter.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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