

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONTRELL D COLEMAN
Claimant

APPEAL NO. 10A-UI-16808-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AXCESS STAFFING SERVICES LLC
Employer

OC: 10-10-10
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Leaving
871 IAC 24.26(4) – Intolerable Working Conditions

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 2, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on January 24, 2011. The claimant did participate. The employer did participate through Cynthia Castillo, Manager.

ISSUE:

Was the claimant discharged due to job-related misconduct or did he voluntarily quit his employment with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was assigned to work at Rock Ten as a packer/crew leader full time beginning March 5, 2010 through September 26, 2010 when he voluntarily quit his job. The claimant and a coworker were talking about dating websites when another employee, the line leader, began swearing at them telling them to get back to work. The claimant complained to the site supervisor Irma Herrera who told him that if he did not like it, he could leave. The claimant left work without talking to any other manager again after the first break of the evening.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment with good cause attributable to the employer.

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.

871 IAC 24.26(4) 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:

(4) The claimant left due to intolerable or detrimental working conditions.

In 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, to rule 871 IAC 24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871 IAC 24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to 871 IAC 24.26(6)(b) but not 871 IAC 24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

The employer does not allow swearing or profanity to be used by employees. The supervisor failed to act on the claimant's complaints of profanity used against him by a coworker. This created an intolerable work environment for claimant that gave rise to a good cause reason for leaving the employment. Benefits are allowed.

DECISION:

The December 2, 2010 (reference 01) decision is reversed. The claimant voluntarily left his employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css