

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK T TRIPP

Claimant

LONNIE MCARTY

MISSISSIPPI VALLEY COMPANY

Employer

APPEAL NO: 12A-UI-00415-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/04/11

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant appealed a department decision dated January 9, 2012, reference 01, that held he voluntarily quit without good cause attributable to his employer on December 12, 2011, and benefits are denied. A telephone hearing was held on February 10, 2012. The claimant, and his employee/witness, Josiah Schmidt, participated. Lonnie McCarty, Owner, and Jared Hendrickson, employee participated for the employer. Employer Exhibit 1 was received as evidence.

ISSUE:

Whether the claimant voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant worked for the employer as a full-time roofer from the summer of 2010 to December 12, 2011. He worked a pattern of employment of full-time hours during the spring/summer/fall months, and less than full-time hours in the winter months. Claimant filed an unemployment claim effective December 4, 2011, seeking partial unemployment. He received his December 9 week ending paycheck showing 28.42 hours and gross wages of \$369.00. His weekly benefit amount is \$385.00.

Claimant had an issue with the work site conditions on Monday, December 12, so he was taking pictures with a motive to show them to his attorney whom the employer knew he was going to see on December 13, as he had been granted time off for this reason. When the owner observed claimant taking pictures at the work site and work was not getting done, he challenged claimant about it at quitting time. A heated discussion ensued that could be overheard by several employees who were present.

One employee heard McCarty say to claimant something like you are fired until you take a urine analysis while another employee thought he was requesting all employees to take a test. The employer has no drug testing policy, but he made the statement to claimant because he thought

he was acting irrational. Claimant believed he was fired, so he did not return to work the following days. The employer considered he voluntarily quit due to job abandonment.

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.

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.

The administrative law judge concludes the claimant voluntarily quit due to detrimental working conditions that is with good cause attributable to his employer on December 12, 2011.

The employer admitted in this hearing during a heated discussion with claimant he challenged him to take a urine analysis when it has no drug testing policy. The employer knew claimant had filed for partial unemployment the Friday before and he questioned the safety of working conditions. While the employer might not have stated to claimant he was fired, using the word and requesting drug testing in light of the circumstances gave claimant a good cause for quitting and not returning to work.

DECISION:

The department decision dated January 9, 2011, reference 01, is reversed. The claimant voluntarily quit with good cause on December 12, 2011. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css