

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY W MAROVEC
Claimant

APPEAL NO. 13A-UI-05814-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

D C TAYLOR CO
Employer

OC: 12/30/12
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated May 8, 2013, reference 02, which held that the claimant was not eligible for unemployment insurance benefits. After due notice, this case came on for hearing by telephone conference call on June 24, 2013. The claimant participated personally. The employer participated by Dustan Smith, job site supervisor. The record consists of the testimony of Anthony Marovec and the testimony of Dustan Smith.

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 does painting and blasting. The claimant was hired on August 17, 2011, as a full-time laborer. The claimant's last day of work was either April 4, 2013, or April 5, 2013.

The claimant was scheduled to go out of town for a job. On August 8, 2013, he texted his foreman and told him that he could not go because of a skin infection. His doctor had taken him off work. Tim Heffner, the foreman, told the claimant that they were leaving on Wednesday and he had to be there or he would be terminated. Mr. Heffner was informed by management that he could not do that because the claimant had a doctor's excuse. The claimant then decided to quit his job because he felt he was being harassed. He had been called a "dumb ass" and that he would be ridiculed for having a skin infection. Another time he was kicked out of a vehicle. The claimant is not certain when he quit the job.

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.

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 claimant is not eligible for unemployment insurance benefits. The claimant admitted that he quit the job. He did so because he felt he was being harassed. The evidence does not show a hostile or intolerable work place. While no one would like to be called a "dumb ass", the most reasonable inference from the evidence is that this was a one time occurrence. The claimant did not even say when it happened or when he was kicked out of a vehicle. There is no evidence that the claimant would be harassed over a skin infection since he had not been back to work since that diagnosis. The claimant had the burden of proof to show a hostile workplace. He simply did not provide enough specificity and examples to show this. He quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The decision of the representative dated May 8, 2013, reference 02, 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