

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROGER A WEISS
Claimant

APPEAL NO. 14A-UI-01268-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**NORTH CENTRAL IOWA REGIONAL SOLID
WASTE AGENCY**
Employer

OC: 01/05/14
Claimant: Respondent (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 29, 2014, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged based on an Agency conclusion that the claimant had voluntarily quit for good cause attributable to the employer on December 28, 2013. The employer requested an in-person hearing. After due notice was issued, an in-person hearing was held in Fort Dodge on October 30, 2014. Claimant Roger Weiss participated. Attorney Stephen Kersten represented the employer and presented testimony through Cynthia Turkle, Mike Sullivan, and Rob Anderson. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibit A and Department Exhibits D-1 and D-2 into evidence.

ISSUE:

Whether the claimant separated from the employment for a reason that disqualifies him for benefits or that relieves the employer of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Roger Weiss was employed by North Central Iowa Regional Solid Waste Agency as a full-time heavy equipment operator from 2006 and last performed work for the employer on Friday, December 27, 2013. Mr. Weiss' duties involved using a bulldozer or other heavy machinery to spread refuse materials in the employer's sanitary landfill. Mr. Weiss' immediate supervisors during the last months of the employment were Rob Anderson, Equipment Supervisor, and Mike Sullivan, Operations Supervisor. Mr. Weiss would perform his work in an enclosed cab. The enclosed cab had positive air pressure, designed to prevent outside odors and fumes from making their way into the cab.

Between 3:00 and 3:30 p.m. on December 27, 2013, Mr. Weiss handled soil that was contaminated with anhydrous ammonia. The landfill had received the contaminated soil from a local industrial plant. While Mr. Weiss was moving the soil, he began to experience eye and

lung irritation. The contaminated soil emitted a very strong odor that was alarming to Mr. Weiss. Mr. Weiss radioed Mr. Sullivan, the on-duty supervisor, regarding his concerns about handling the contaminated soil. Mr. Sullivan told Mr. Weiss to just push the soil aside and someone else would take care of it the next morning. Mr. Weiss advised Mr. Sullivan that it was too late, that he had already used his equipment to move the contaminated soil. Mr. Weiss worked to the end of his shift and then went home.

On the evening of December 27, 2013, Mr. Weiss telephoned Mr. Anderson. Mr. Weiss telephoned Mr. Anderson even though Mr. Anderson had been off work on a scheduled vacation that week. Mr. Weiss reported to Mr. Anderson that he had handled contaminated soil and that his eyes and lungs were irritated. Mr. Weiss asked Mr. Anderson whether he could go to the doctor. Mr. Anderson told Mr. Weiss that he could go to the doctor. Though Mr. Weiss was reporting an alleged workplace injury, Mr. Anderson did not take any steps to address the matter as a worker's compensation matter. During the conversation with Mr. Anderson, Mr. Weiss told Mr. Anderson that he intended to contact the Iowa Department of Natural Resources concerning the contaminated soil. Mr. Anderson told Mr. Weiss to do what he needed to do. Mr. Weiss went to an emergency room facility, was evaluated, and was cleared to return to work.

On the morning of Saturday, December 28, 2013, Mr. Weiss appeared for work as scheduled. When Mr. Weiss arrived at the workplace, he entered the office to clock in. At that time, Mr. Sullivan confronted Mr. Weiss in an aggressive manner. Mr. Anderson had notified Mr. Sullivan of Mr. Weiss' telephone call and of Mr. Weiss' intention to notify the DNR about the contaminated soil. Mr. Sullivan said to Mr. Weiss, "What the fuck do you think you're doing and who the fuck do you think you are?" The utterance was in reference to Mr. Weiss' statement during the call with Mr. Anderson that he was going to contact the DNR regarding the contaminated soil. Mr. Sullivan's tone and demeanor were aggressive and intimidating. Mr. Weiss told Mr. Sullivan that he was not going to be spoken to like that. Mr. Weiss added, "Fuck you, I'm going home." Though it had not been uncommon for staff to use profanity in the workplace in a joking manner, Mr. Sullivan's use of profanity on December 28, 2013 occurred in a completely different context. Mr. Sullivan followed Mr. Weiss to his car. Mr. Sullivan then left the workplace.

Mr. Weiss was next scheduled to work on Monday, December 30, 2013. On Sunday evening, December 29, 2013, Mr. Weiss telephoned Mr. Anderson. Mr. Weiss was aware that Mr. Anderson was scheduled to be back at work the next day. Mr. Weiss asked Mr. Anderson whether he still had a job and whether he should report for work the next day. Mr. Anderson told Mr. Weiss that Mr. Anderson would need to speak to Ms. Turkle and Mr. Sullivan. Mr. Weiss understood Mr. Anderson to mean that he should wait to hear back from the employer about his work status.

On December 30, 2013, Mr. Anderson alerted Cynthia Turkle, Interim Director, of Mr. Weiss' contact with Mr. Anderson and Mr. Sullivan, the concern about the contaminated soil, and about Mr. Weiss' departure from the workplace at the start of his shift on December 28, 2013. Ms. Turkle looked into the matters, but left her contact with Mr. Weiss for the end of that process. Ms. Turkle had other employees draft statements downplaying concern about the contaminated soil, but did not solicit a written statement from Mr. Weiss. Ms. Turkle elected to focus her contact with Mr. Weiss on his unauthorized departure from the workplace on the morning of December 28, 2013. The employer concluded and asserted that Mr. Weiss' early

departure on December 28, 2013 amounted to a voluntary quit by job abandonment. The employer had a written policy that deemed any unauthorized absence could be determined to be a voluntary quit. Mr. Weiss was aware of the policy. On December 31, 2013, Ms. Turkle left a voice mail message for Mr. Weiss, alerting him that the employment was terminated.

Mr. Weiss had indeed contacted the Iowa Department of Natural Resources on December 30, 2013 regarding his concern about the contaminated soil. At that time, Mr. Weiss learned that contaminated soil could indeed be spread at the landfill and that the practice was analogous to farmers spreading anhydrous on farm fields.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). 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 weight of the evidence is sufficient to establish a voluntary quit on December 28, 2013. Mr. Weiss was scheduled to work a shift that day, but left at his scheduled start time. The context of the departure would lead a reasonable person to conclude that Mr. Weiss had quit the employment by walking off the job.

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.

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 administrative law judge found much of Mr. Sullivan's testimony not credible. During the hearing, Mr. Sullivan had a convenient lapse of memory with regard to being aware, at the time of the December 28 contact, of Mr. Weiss' December 27 statement to Mr. Anderson about

contacting the DNR in regard to the contaminated soil. Mr. Sullivan also had a convenient lapse of memory concerning the particulars of the utterance he directed at Mr. Weiss on the morning of December 28. Mr. Anderson testified credibly had he had in fact told Mr. Sullivan of Mr. Weiss' intention to contact the DNR. Mr. Weiss testified credibly concerning Mr. Sullivan's aggressive and intimidating language and demeanor on December 28, 2013. The weight of the evidence indicates that Mr. Sullivan's purpose on the morning of December 28 was to intimidate, castigate and retaliate against Mr. Weiss for raising the possibility of drawing the attention of the Iowa Department of Natural Resources to the employer. Mr. Weiss was genuinely concerned that he had been exposed to a dangerous substance and that the employer had accepted into its facility a dangerous ground and water pollutant. Mr. Sullivan's conduct on the morning of December 28, 2013 was sufficient to establish intolerable and detrimental working conditions that would have prompted a reasonable person to leave the employment.

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

The administrative law judge notes that the outcome of the case would have been the same had the administrative law judge concluded that Mr. Weiss had been discharged from the employment, as the evidence was not sufficient to establish disqualifying misconduct.

DECISION:

The claims deputy's January 29, 2014, reference 01, decision is affirmed. The claimant voluntarily 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs