

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADAM R MCCAIN
Claimant

APPEAL NO. 08A-UI-09303-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WINGER CONTRACTING COMPANY
Employer

**OC: 07/06/08 R: 03
Claimant: Appellant (2)**

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Adam McCain (claimant) appealed a representative's October 10, 2008 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Winger Contracting Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 28, 2008. The claimant participated personally. The employer participated by Debra Shaw, Office Manager, Nick Fiscella, Piping Superintendent.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on March 27, 2007, as a full-time helper. The claimant decorated his locker with flames. Co-workers spray painted over the claimant's work. They threw his hardhat and other equipment in the garbage. The claimant talked to the foreman about the situation and the foreman saw the locker. The foreman only wanted to know if the claimant was going to fight the co-workers in the parking lot. The claimant quit work on or about August 28, 2008.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work with good cause attributable to the employer.

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 law presumes a claimant has left employment with good cause when he quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). It would be reasonable for the employee to inform the employer about the conditions the employee believes are intolerable or detrimental and that he intends to quit employment unless the conditions are corrected. This would allow the employer a chance to correct those conditions before a quit would occur. However, the Iowa Supreme Court has stated that a notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions. Hy-vee, Inc. v. Employment Appeal Board and Diyonda L. Avant, (No. 86/04-0762) (Iowa Sup. Ct. November 18, 2005). The claimant notified his foreman of the conditions and the foreman saw the locker. The claimant subsequently quit due to those conditions. The claimant is eligible to receive unemployment insurance benefits.

DECISION:

The representative's October 10, 2008 decision (reference 01) is reversed. The claimant voluntarily quit work with good cause attributable to the employer. He is eligible to receive unemployment insurance benefits.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css