

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSHUA HERBST
Claimant

APPEAL NO. 07A-UI-02548-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HANDKE ENTERPRISES
Employer

**OC: 02/04/07 R: 01
Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Joshua Herbst (claimant) appealed an unemployment insurance decision dated March 2, 2007, reference 01, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Handke Enterprises (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 29, 2007. The claimant participated in the hearing with Attorney Frank Tenuta. The employer participated through owner Virgil Handke. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits.

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 employed as a part-time general laborer from approximately June 8, 2006 through February 5, 2007, when he voluntarily quit. The employer contracted with St. Luke's Hospital and performed various duties. However, the one duty that took priority was snow removal and that was to be done before any other tasks. On February 5, 2007, the employer was not even aware the claimant had reported to work because the claimant was taking care of the biohazard waste, which was one of his job duties. The employer became furious with the claimant because he was not doing the snow removal even though he had been told ten to fifteen times that the snow removal took priority. The employer began to yell at the claimant and used profanity. The claimant testified the employer had yelled at him previously and he could not take it anymore, so he quit.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits. He is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

The claimant quit because he could not handle the employer yelling at him when he did something wrong. 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).

In the case herein, it is not unreasonable for an employee to want to be treated with respect, even when they are making a mistake and not doing something correctly. The employer testified he hires employees who have difficulty getting jobs, which is admirable, but that does not lessen his duty to treat his employees with dignity and respect. It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. He has satisfied that burden and benefits are allowed.

The employer is not a base period employer and its account is not subject to any charges during the claimant's current benefit year. If the claimant establishes a subsequent benefit year, the wage credits he earned from approximately June 8, 2006 through February 5, 2007, would be subject to charge since the claimant quit his employment with good cause attributable to the employer.

DECISION:

The unemployment insurance decision dated March 2, 2007, reference 01, is reversed. The claimant voluntarily quit his employment with good cause attributable to the employer and is qualified to receive unemployment insurance benefits, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css