

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY D FETT

Claimant

APPEAL NO. 06A-UI-10495-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARKER COMPANY LTD

Employer

**OC: 11/06/05 R: 03
Claimant: Respondent (1)**

Section 96.5(1) – Voluntary Quit
Section 96.5(3)(a) – Refusal to Accept Suitable Work

STATEMENT OF THE CASE:

Barker Company Ltd. filed a timely appeal from the October 24, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on November 13, 2006. Claimant Timothy Fett participated and presented additional testimony through Barker Company warehouse employees Melvin Ash, Paula Montgomery and Tom Durlinger. Vice President Jake Syfert represented the employer and presented additional testimony through Warehouse Lead Mike Rippy and Shipping and Receiving Supervisor Robert McDavid. Employer's Exhibit One was received into evidence. The administrative law judge took official notice of Agency records regarding benefits disbursed to the claimant. The parties waived formal notice on the issue of whether the claimant had refused to accept an offer of suitable work.

ISSUE:

Whether the claimant voluntarily quit the employment for good cause attributable to the employer. He did.

Whether the claimant's working conditions were intolerable and/or detrimental such that a reasonable person would have quit the employment. They were.

Whether the claimant refused to accept an offer of suitable employment. He did not.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Timothy Fett was employed by Barker Company as a full-time Receiving Clerk/Forklift Operator from August 9, 2004 until October 2, 2006, when he voluntarily quit. Mr. Fett's immediate supervisor was Warehouse Lead Mike Rippy. Mr. Rippy was in the daily habit of raising his voice and/or yelling at Mr. Fett when issuing directives or reprimands. Other warehouse employees witnessed Mr. Rippy's behavior toward Mr. Fett. Two warehouse employees made separate attempts to address the behavior. Warehouse clerk Paula Montgomery pointed out to Mr. Rippy that he had paperwork for one delivery confused with paperwork for another after Mr. Rippy yelled at Mr. Fett for allegedly botching one of the deliveries. Warehouse worker Tom

Durflinger, a 13-year veteran in the employment, went to Mr. Rippy's supervisor, Receiving Supervisor Robert McDavid, to warn Mr. McDavid that the employer risked losing a good employee if Mr. Rippy were allowed to continue in his conduct toward Mr. Fett. Mr. Rippy's behavior took the form of ongoing verbal abuse directed exclusively at Mr. Fett. The final incident of such behavior occurred on September 29, when Mr. Rippy set up a table in an area Mr. Fett needed clear so that he could unload a semi truck of material. When Mr. Fett began stacking pallets near the table, Mr. Rippy started screaming at Mr. Fett. Mr. Rippy eventually realized that Mr. Fett did in fact need the space to unload the semi and moved the table. On Monday, October 2, Mr. Fett left a voicemail message for Vice President Jake Syfert. Mr. Fett told Mr. Syfert that he was disappointed the employer had not taken care of the problems in the warehouse and indicated that he would not be back.

During the last month of Mr. Fett's employment, Mr. Fett explored transferring to a different department. However, the other department did not have an opening and an offer of employment was never in fact made. The employer made no other offers of employment to Mr. Fett.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the evidence in the record establishes that Mr. Fett's voluntary quit was for good cause attributable to the employer. It does.

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.

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).

Just as an employer has the right to expect civility from employees, employees have the right to expect civil treatment from the employer or supervisors. The evidence in the record establishes working conditions that were in fact intolerable and detrimental, as well as working conditions that would prompted a reasonable person to quit the employment. The evidence indicates that Mr. Rippy directed ongoing verbal abuse toward Mr. Fett. It was not just Mr. Fett who perceived the behavior to be abusive. Other employees were sufficiently disturbed and/or concerned about the behavior that they took personal risk to bring the matter to the attention of the employer, both during Mr. Fett's employment and through participating in the appeal hearing.

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

The next question is whether the evidence in the record establishes that Ms. Fett refused to accept an offer of suitable work from the employer.

Iowa Code section 96.5-3-b provides:

An individual shall be disqualified for benefits:

3. Failure to accept work. If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual. The department shall, if possible, furnish the individual with the names of employers which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the department on forms provided by the department. However, the employers may refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual for benefits until requalified. To requalify for benefits after disqualification under this subsection, the individual shall work in and be paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
- (2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
- (3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

871 IAC 24.24(14)(a)(b) provides:

Failure to accept work and failure to apply for suitable work. Failure to accept work and failure to apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

(14) Employment offer from former employer.

a. The claimant shall be disqualified for a refusal of work with a former employer if the work offered is reasonably suitable and comparable and is within the purview of the usual occupation of the claimant. The provisions of Iowa Code section 96.5(3)"b" are controlling in the determination of suitability of work.

b. The employment offer shall not be considered suitable if the claimant had previously quit the former employer and the conditions which caused the claimant to quit are still in existence.

871 IAC 24.24(1)a provides:

(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

The evidence in the record establishes that the employer did not make any bonafide offer of new or different employment to Mr. Fett. See 871 IAC 24.24(1)(a). Instead, the evidence indicates that the head of another department inquired about Mr. Fett's work performance, but indicated at the same time that the department did not have any openings. Because there was no offer of suitable employment, there could be no refusal. Again, Mr. Fett is eligible for benefits, provided he is otherwise eligible.

DECISION:

The Agency representative's October 24, 2006, reference 01, decision is affirmed. The claimant quit the employment due to intolerable and/or detrimental working conditions and for good cause attributable to the employer. The employer made no bonafide offer of different or new employment and there was not refusal of employment. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/cs