

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**JOHN P HERNANDEZ**  
Claimant

**A1 CABINET & GRANITE LLC**  
Employer

**APPEAL NO. 21A-UI-04088-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/22/20**  
**Claimant: Respondent (1)**

Iowa Code Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the January 22, 2021, reference 01, decision that allowed benefits to the claimant, provided he was otherwise eligible, based on the deputy's conclusion that the claimant voluntarily quit on November 17, 2020 with good cause attributable to the employer and in response to detrimental working conditions. After due notice was issued, a hearing was held on April 2, 2021. The claimant participated. Sammy Lin represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibit 1 into evidence.

**ISSUE:**

Whether the claimant's voluntary quit was for good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by A1 Cabinet & Granite, L.L.C. as a full-time installer and last performed work for the employer on November 14, 2020. On that day and on earlier days, the lead person the claimant worked under directed offensive, demeaning epithets at the claimant. On that day and on earlier days, the lead person called the claimant stupid. On November 14, 2020, the lead person told the claimant to go home. On November 14, owner/manager Sammy Lin was present during the verbal abuse and did nothing to intervene to stop the verbal abuse. Immediately after that incident, the claimant sat for a period in the employer's truck before he went home. The claimant left the keys to the employer's truck in console of the truck. In the days that followed, the employer's office staff made harassing phone calls to the claimant in which the office staff accused the claimant of stealing the keys to the truck and threatened to call the police. The employer did indeed call the police, who went to the claimant's home and questioned the claimant without taking further action. The claimant elected not to return to employment after enduring the verbal abuse and after being falsely accused of theft of keys.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 Iowa Admin. Code r. 871-24.26(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).

An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. *Henecke v. Iowa Department of Job Service*, 533 N.W.2d 573 (Iowa App. 1995). Use of foul language can alone be a sufficient ground for a misconduct disqualification for unemployment benefits. *Warrell v. Iowa Dept. of Job Service*, 356 N.W.2d 587 (Iowa Ct. App. 1984). Employees have a corresponding right to expect decency and civility from the employer and not be subjected to harassment or verbal abuse in the workplace.

The evidence in the record establishes a voluntary quit due to intolerable and detrimental working conditions that would have prompted a reasonable person to leave the employment. These included the repeated instances of verbal abuse tacitly approved by the employer, harassment that include threatening phone calls and sending the police to the claimant's home, as well as the false accusation of theft. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The Agency representatives January 22, 2021, reference 01, decision is affirmed. The claimant 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 for benefits paid to the claimant.

A handwritten signature in black ink that reads "James E. Timberland". The signature is written in a cursive, flowing style.

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James E. Timberland  
Administrative Law Judge

April 13, 2021  
Decision Dated and Mailed

jet/kmj