

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JORDAN R BAILEY
Claimant

APPEAL NO. 10A-UI-17622-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED PARCEL SERVICE
Employer

**OC: 11/21/10
Claimant: Appellant (1)**

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 16, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 4, 2011. Claimant participated. Dan Kelly represented the employer.

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: Jordan Bailey was employed by United Parcel Service as a part-time loader/bagger from October 2008 until September 9, 2010, when he voluntarily quit the employment. On September 9, Dan Kelly, Twilight Day Sort Manager, summoned Mr. Bailey to a meeting to discuss a matter that had come to Mr. Kelly's attention the previous day. Multiple employees had alleged to the employer that Mr. Bailey had called another employee a "homo" and that Mr. Bailey had said he was going to "watch his butt" when he around the coworker in question. When Mr. Kelly met with Mr. Bailey on September 9, a security representative and a union steward were also present. When Mr. Kelly asked Mr. Bailey whether he had made the comments attributed to him, Mr. Bailey gave an equivocal response. Mr. Kelly told Mr. Bailey that he intended to fully investigate the matter. Mr. Kelly told Mr. Bailey that if Mr. Bailey made the comments, the comments would be in violation of the employer's zero tolerance harassment policy and would subject him to discharge from the employment. When Mr. Bailey balked at the idea of being investigated, the security representative mentioned to Mr. Bailey that he had the option of resigning if he wished to avoid participating in the investigation. The employer was prepared to allow Mr. Bailey to continue to perform his duties while the employer investigated the matter. Mr. Bailey knew there were multiple steps to the employer's discharge procedure and that the employer was not discharging him from the employment in connection with the September 9 meeting. Mr. Bailey elected to resign the employment, rather than participate in the investigation. Mr. Bailey made the decision to resign despite the union steward's recommendation that he not resign from the employment. Mr. Bailey completed a resignation form and ended his employment.

On June 17, 2010, Mr. Bailey had alleged that a particular supervisor had been discriminating against him based on race, gender, and age and filed a grievance. The supervisor in question, Denise Reynolds, had been Mr. Bailey's supervisor, but was not his supervisor during the last months of the employment. Mr. Bailey is an African-American young man. The employer investigated the allegations and concluded there was no basis for Mr. Bailey's allegations or grievance. When Mr. Kelly presented the findings of his investigation to Mr. Bailey, Mr. Bailey withdrew his grievance. The matter was resolved at least three months prior to Mr. Bailey's voluntary quit.

REASONING AND CONCLUSIONS OF LAW:

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).

When a worker voluntarily quits due to dissatisfaction with the work environment or in response to a reprimand, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(22) and (28).

The weight of the evidence fails to support Mr. Bailey's assertion that he quit due to harassment or discrimination. The evidence fails to establish that anyone in the workplace harassed or discriminated against Mr. Bailey. The evidence fails to establish any intolerable or detrimental working conditions that would have prompted a reasonable person in Mr. Bailey's position to leave the employment. The evidence indicates instead that Mr. Bailey voluntarily quit rather than participate in an investigation into allegations that he himself had directed discriminatory remarks toward a coworker. The weight of the evidence indicates that Mr. Bailey voluntarily quit the employment on September 9, 2010 to avoid the prospect of being discharged from the employment *at some point in the future* once the employer concluded its investigation into his conduct. This was not a quit in lieu of immediate discharge from the employment. Mr. Bailey resigned for personal reasons, in anticipation of disciplinary action and due to dissatisfaction with the employment, and not for good cause attributable to the employer. Mr. Bailey is disqualified for benefits until he has worked in and been paid wages for insured work equal to

ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Bailey.

DECISION:

The Agency representative's December 16, 2010, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs