

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TERRY O BRIGGS**

Claimant

**APPEAL NO. 14A-UI-12854-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ECHTERNACH CONSTRUCTION**

Employer

**OC: 01/26/14**

**Claimant: Appellant (2)**

Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the December 1, 2014, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that the claimant had voluntarily quit without good cause attributable to the employer because he did not like the work environment. After due notice was issued, a hearing was held on January 14, 2015. The claimant participated personally and represented by attorney Raymond Aranza. Michael Echternach represented the employer and presented additional testimony through Scott Ross, Janson Ludwigs and Josh Bullington.

**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: Claimant Terry Briggs was employed by Echternach Construction as a full-time concrete construction laborer from 1984 until October 31, 2014, when he voluntarily quit by walking off the job in the middle of a concrete pour and finishing project. Time was of the essence as the crew was pouring and finishing the concrete floor of a duplex. During the pour, Michael Echternach, the business owner, repeatedly yelled at Mr. Briggs to come assist at the end of the area where Mr. Echternach was working. Mr. Briggs told Mr. Echternach that the concrete at his end of the project was also getting hard, but Mr. Echternach continued to yell at Mr. Briggs to come to Mr. Echternach's end of the project. Mr. Briggs got upset and responded, "Fuck you." Mr. Echternach "flipped off" Mr. Briggs in a two-handed offensive gesture. Mr. Briggs threw down his trowels and stormed off. As Mr. Briggs was storming from the jobsite with the intention of quitting, Mr. Echternach demanded Mr. Briggs surrender his phone to Mr. Echternach. Mr. Briggs responded that the phone belonged to him and the employer merely paid for the line. Mr. Echternach directed Mr. Briggs to see to it that the telephone line was closed. Mr. Briggs left the jobsite and did not return to the employment.

Mr. Briggs' decision to leave the employment was not based solely on the incident that occurred on the final day. Mr. Briggs is a cigarette smoker and did not appreciate the employer's comments about his smoking. Mr. Briggs had ongoing health issues, routinely discussed those in the workplace, but begrudged the employer's responsive opinions about where he should go for medical care or the employer's negative comments when Mr. Briggs needed time off to attend to medical issues. The employer had told Mr. Briggs that he should get his medical care in Red Oak, rather than in Omaha. The employer did not deny the requests for time. In connection with one or more requests for time off, Mr. Echternach had responded, "Jesus!" Mr. Briggs did not appreciate other comments that Mr. Echternach made about Mr. Briggs in the presence of other employees. These included that Mr. Briggs was fat and lazy. Mr. Briggs also did not care for the fact that the crew members who rode to the jobsite with him in the morning were in the habit of smoking marijuana on the way to the job site and in the habit of smoking marijuana at the jobsite. Mr. Briggs had complained to Mr. Echternach about that situation, but neither took any steps to stop the conduct.

### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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).

The administrative law judge found Mr. Briggs' assertions about the work environment on balance to be credible. The fact that the employer had three current employees provide testimony consistent with the employer did not make any of that testimony more persuasive or credible. Mr. Briggs had some legitimate complaints about the work environment and some less legitimate complaints. Amongst the illegitimate complaints are those related to the cigarette smoking. The legitimate complaints included the employer's habit of yelling at Mr. Briggs, the employer's demeaning comments about Mr. Briggs' weight, motivation, health care, and time off requests. The weight of the evidence supported Mr. Briggs' testimony that the employer flipped him off and that the employer demanded that Mr. Briggs surrender his phone before he left. Despite the convenient testimony from the other crew members denying marijuana use, Mr. Briggs' testimony about the regular marijuana use and his complaints to the employer was credible. One is reminded that such conduct is criminal conduct in the state of Iowa. The

weight of the evidence establishes that Mr. Echternach did what he pleased in the workplace and that Mr. Briggs occasionally got fed up and stormed off. In connection with the final incident, wherein Mr. Briggs got tired of being yelled at, he elected not to return after he stormed off.

Mr. Briggs voluntarily quit the employment for good cause attributable to the employer. Accordingly, Mr. Briggs is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The December 1, 2014, reference 01, decision is reversed. The claimant voluntarily 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs