

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BRANDON OGBEBOR**  
Claimant

**AEROTEK INC**  
Employer

**APPEAL 15A-UI-09749-CL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/02/15**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 27, 2015, (reference 04) unemployment insurance decision that denied benefits based upon a voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on September 14, 2015. Claimant participated. Employer did not participate.

**ISSUE:**

Did claimant voluntarily quit the employment with good cause attributable to employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a concrete finisher from March 2015, and was separated from employment on April 23, 2015, when he voluntarily quit.

During his employment, claimant's foreman treated him harshly and regularly used the word "nigger." Claimant is African American. Within two weeks, claimant reported the foreman's conduct to employer. An investigation was conducted in which claimant and his co-worker, Joshua Silverthorn, participated. On April 23, 2015, claimant came to work and learned the foreman had been terminated. A project manager then assigned claimant and Silverthorn, who was also a concrete finisher, to do underground utility work. The work was much more physically demanding and dangerous than the concrete finisher position. Claimant informed employer he was resigning his employment as he felt he was moved to the underground utility position in retaliation for complaining about discrimination.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment with good cause attributable to the employer.

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.

Iowa Admin. Code r. 871-24.26(4) and (1) provide:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(4) The claimant left due to intolerable or detrimental working conditions.

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

Claimant's assignment to perform underground utility work was a change in his contract of hire in that the change jeopardized claimant's safety. Being assigned more physically demanding and dangerous work in response to complaining of discrimination also constitutes an intolerable working condition. Thus, claimant quit for good-cause reasons attributable to employer.

**DECISION:**

The August 27, 2015, (reference 04) unemployment insurance decision is reversed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided claimant is otherwise eligible and the benefits withheld shall be paid.

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Decision Dated and Mailed

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