

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHNSON, JAMES**  
Claimant

**APPEAL NO. 10A-UI-15621-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**QCPC INC**  
**QUAD CITIES POWDER COATING INC**  
Employer

**OC: 10/17/10**  
**Claimant: Respondent (1)**

Iowa Code Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the November 9, 2010, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on January 6, 2011. Claimant participated. Dana Shewry represented the employer and presented additional testimony through Arthur Abby and Saree Hahn. Exhibits One and Two were received into evidence.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: James Johnson was employed by Quad Cities Powder Coating, Inc., as a full-time line worker/machine operator from 2006 until October 12, 2010. Supervisor/Forman Arthur Abby was Mr. Johnson's immediate supervisor. On October 12, Mr. Johnson gave verbal notice to Dana Shewry, Owner, that he would be leaving employment in two weeks time. Mr. Shewry directed Mr. Abby to obtain a written resignation from Mr. Johnson. Johnson completed a brief written notice that he would be leaving in two weeks time and delivered it to Saree Hahn, Office Manager. Ms. Hahn is Mr. Shewry's daughter. At the end of the work day, Mr. Johnson discovered that his timecard had been removed from where he expected to find it. Mr. Shewry told Mr. Johnson he was accepting his resignation, not come back, and that he was done. The conversation occurred within earshot of the employees gathered at the time clock.

Mr. Johnson gave his two-week notice in response to an incident that occurred on October 11. Mr. Johnson had been using a plastic scoop to clean accumulated shot out of the machine, when Mr. Shewry happened by. Mr. Shewry said to Mr. Johnson, "What the fuck are you doing using that fucking plastic scoop digging out that metal shot? You're going to break it." Mr. Shewry raised his voice during the utterance. Mr. Shewry then told Mr. Johnson to get away from the machine and to go work on the line. Mr. Johnson complied. Later that day, Mr. Johnson told Mr. Abby about the incident and said that he would not be working there much longer. Mr. Abby told Mr. Johnson not to worry about it and to continue to do his work.

The employer has a written harassment policy. Mr. Johnson received a copy of the policy. If Mr. Johnson had a problem with the owner of the company, the owner expected him to direct his complaint to his immediate supervisor, who would then discuss the complaint with Ms. Hahn, the owner's daughter, and if the supervisor and Ms. Hahn thought the owner was out of line, they would then approach the owner about the matter.

Though the owner had not previously spoken to Mr. Johnson in such a manner, Mr. Johnson had observed the owner speaking to others in a similar manner. Mr. Johnson was demoralized by the idea that he had worked for the employer for four years and was not appreciated.

### **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.

871 IAC 24.26(12) provides as follows:

When an employee gives notice of intent to resign at a future date, it is a quit issue on that future date. Should the employer terminate the employee immediately, such employee shall be eligible for benefits for the period between the actual separation and the future quit date given by the claimant.

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).

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). Employees have the right to expect the same decency and civility from the employer.

The administrative law judge finds no basis in the evidence presented at the hearing for discounting Mr. Johnson's credibility. The weight of the evidence establishes that Mr. Johnson submitted his two-week notice in direct response to verbal abuse perpetrated by Mr. Shewry. The employer's utterance was loud, vulgar, and demeaning. The employer's conduct amounted

to an intolerable and detrimental working condition. The evidence indicates that the employer took a heavy-handed approach when addressing the concern regarding the scoop selection and took the same heavy-handed approach the next day when the employer ended the employment in immediate response to the notice of quit. The employer's harassment policy was ineffectual in the context of the circumstances that prompted Mr. Johnson's quit.

Mr. Johnson voluntarily quit the employment, effective October 26, 2010, for good cause attributable to the employer. The employer elected to end the employment on October 12, 2010, rather than allow Mr. Johnson to work his notice period. Mr. Johnson is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Johnson. Mr. Johnson's eligibility for benefits includes, but is not limited to, that portion of the two-week notice period falling on or after October 17, 2010, which was the effective date of the claim.

**DECISION:**

The Agency representatives November 9, 2010, reference 01, decision is affirmed. 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. The claimant's eligibility for benefits includes, but is not limited to, that portion of the two-week notice period falling on or after October 17, 2010, the effective date of the claim.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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