

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRYAN D WHITTEN**  
Claimant

**APPEAL NO. 11A-UI-14879-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THOMAS SANITATION INC**  
Employer

**OC: 10/16/11**  
**Claimant: Appellant (2)**

Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Bryan Whitten filed a timely appeal from the November 8, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 9, 2011. Mr. Whitten participated. Richard Thomas represented the employer and presented additional testimony through Christina Hamm.

**ISSUE:**

Whether Mr. Whitten'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: Bryan Whitten was employed by Thomas Sanitation as a full-time sanitation worker from 2007 until October 6, 2011, when he voluntarily quit. At the time, Mr. Whitten had an interview scheduled with McDonald's. Though McDonald's had not offered him employment, Mr. Whitten notified Thomas Sanitation that he was quitting in light of the interview scheduled with McDonald's.

Mr. Whitten worked as part of a sanitation crew with the owner's nephew, Jared. Jared had worked for the employer for two or three years alongside Mr. Whitten. Jared was in the habit of yelling obscenities at Mr. Whitten. Within a day or two prior to Mr. Whitten's quit, Jared had called Mr. Whitten a son of a bitch, had told him, "Fuck you," and had told Mr. Whitten that he was "no good on the truck." Jared had engaged in similar conduct the day before that as well. Mr. Whitten had complained to the employer about prior similar conduct, but the employer had done nothing about it. In light of the employer's inaction, Mr. Whitten did not bother to mention Jared at the time he notified the employer of the quit. In spring of 2011, Richard Thomas, owner of Thomas Sanitation, told Mr. Whitten to get his head out of his ass. Nothing similar involving Mr. Thomas happened thereafter.

## REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Code section 96.5(1)(a) provides as follows:

Causes for disqualification.

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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, *and the individual performed services in the new employment*. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

[Emphasis added.]

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).

Mr. Whitten did not quit to accept other employment, because there was no job offer at the time. Mr. Whitten quit due to intolerable and detrimental working conditions. The employer was aware of and tolerated Jared's verbal abuse directed at Mr. Whitten. The employer had at least on one occasion engaged in the same sort of verbal abuse. Mr. Whitten quit the employment for good cause attributable to the employer. Accordingly, Mr. Whitten is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Whitten.

**DECISION:**

The Agency representative's November 8, 2011, reference 01, decision is reversed. 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw