

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER T STEFFEN

Claimant

APPEAL NO. 13A-UI-01910-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WULFEKUHLE INJECTION & PUMPING INC

WULFEKUHLE INJECTION & PUMPING

Employer

OC: 12/30/12

Claimant: Respondent (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 1, 2013, reference 01, decision that allowed benefits and that held the employer's account could be charged for benefits. After due notice was issued, a hearing was held on March 14, 2013. Claimant Christopher Steffen participated. Lee Wulfekuhle represented the employer and presented additional testimony through Greg Wulfekuhle and Jodi Wulfekuhle. Exhibit One was received into evidence.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Wulfekuhle Injection & Pumping is in the biowaste management and bio-salvage business. The employer removes and hauls biowaste from municipal wastewater treatment facilities or other biowaste storage facilities and spreads it on agricultural fields. Lee Wulfekuhle, is President, C.E.O. and sole shareholder. Lee Wulfekuhle's brother, Greg Wulfekuhle, assists with operating the business and functioned as claimant Christopher Steffen's immediate supervisor. Jodi Wulfekuhle also assists with operating the business.

Mr. Steffen was employed as a full-time, salaried, laborer from October 2011 until January 3, 2013, when he voluntarily quit. At the start of the employment, the employer paid Mr. Steffen an annual salary of \$38,000.00. The employer subsequently raised Mr. Steffen's salary to \$41,800.00. The employer also provided Mr. Steffen with \$2,000.00 annually to purchase insurance. The employer also provided Mr. Steffen with a \$1,500.00 end of year bonus. The bonus was not guaranteed, but was instead based on Mr. Steffen's demonstrated work ethic. As a salaried worker, Mr. Steffen often worked as many as 70 or 80 hours per week. During slow periods, the employer might put Mr. Steffen to work in the employer's shop. During the first two or three months of 2012, the employer also put Mr. Steffen to work splitting large quantities

of wood for use in the employer's shop and in Lee Wulfekuhle's home. In October 2012, the employer again had Mr. Steffen split large quantities of wood.

Toward the end of 2012, Mr. Steffen complained to the employer about the number of hours he was working in exchange for the salary he was receiving. Mr. Steffen did not demand any change to the pay structure. The employer was moving into a period when the employer knew business would be slower than it had been. The employer decided unilaterally to make Mr. Steffen an hourly employee and to pay him \$20.00 per hour effective January 2, 2013. On December 28, 2012, Lee Wulfekuhle told Mr. Steffen about the impending change in the pay structure. Mr. Steffen was appropriately concerned that the transition to the hourly wage would result in a substantial reduction in his pay. During the slow periods, the change to hourly pay could result in Mr. Steffen only being paid for 20 hours of work per week. Mr. Steffen was already upset with the way the employer had been treating him and decided to continue in the employment until the end of 2012 in order to secure the bonus check he expected to receive at that time. After Mr. Steffen received the bonus check, he did not return to the employment. On January 2, 2013, he sent a text message from his cell phone telling the employer that it was his birthday and he would not be reporting for work. He also told the employer that his phone was wet and, for that reason, he could not make a phone call. The employer sent a message back indicating that the employer had work for Mr. Steffen. On January 3, Mr. Steffen sent a text message to the employer indicating that he was done with the employer. In other words, he was voluntarily quitting the employment.

Toward the end of the employment, Lee Wulfekuhle told Mr. Steffen that the only way he could continue to keep him busy was for Mr. Steffen to transfer to another project in Kansas. Mr. Steffen had not previously performed any work for the employer in Kansas and was not interested in working for an extended period in Kansas.

Lee Wulfekuhle was in the habit of being verbally and mentally abusive toward Mr. Steffen and otherwise dealing with Mr. Steffen in a heavy-handed manner. Two weeks prior to the separation, Lee Wulfekuhle erroneously accused Mr. Steffen of failing to return a wrench that belonged to Mr. Wulfekuhle and of losing the wrench. Mr. Wulfekuhle yelled at Mr. Steffen that Mr. Steffen had the wrench last and that Mr. Steffen had to find the wrench. When Mr. Steffen tried to explain to Mr. Wulfekuhle that he did not have the wrench and was not the last person to use it, Mr. Wulfekuhle's yelling intensified. Mr. Steffen accurately perceived Mr. Wulfekuhle to be calling him a liar. It was later determined that Greg Wulfekuhle had last used the wrench at a different location and that Lee Wulfekuhle had simply forgotten that fact. Mr. Wulfekuhle did later apologize to Mr. Steffen for blaming him for the misplaced wrench.

During the first week of December, Greg Wulfekuhle and Mr. Steffen were spreading biowaste on a farmer's field. The field had to be frozen at the time the waste was spread to avoid causing ruts in the field that would interfere with the farmer's GPS-based planting the next spring. Prior to any waste being spread on the field, Lee Wulfekuhle and the farmer had each determined that the field was sufficiently frozen for waste to be spread on the field without causing damage. As Mr. Steffen was spreading waste on the field, he observed that the equipment was leaving four-inch ruts in the field. Mr. Steffen reported this to Greg Wulfekuhle, who reported it to Lee Wulfekuhle. When Lee Wulfekuhle went to the jobsite and observed the four-inch ruts in the field, he became belligerent. Mr. Wulfekuhle yelled at Mr. Steffen to stop staring at him—and that Mr. Steffen was really pissing him off. He told Mr. Steffen to get out of the waste spreading truck he was operating. Lee Wulfekuhle yelled at Mr. Steffen that it was not sufficient to tell Greg Wulfekuhle that the truck was leaving ruts in the field, that Mr. Steffen should have told Lee Wulfekuhle directly. Mr. Wulfekuhle ordered Mr. Steffen into another work truck and yelled, "You're going to sit there until I'm done." Mr. Wulfekuhle then left Mr. Steffen waiting in the truck

for 45 minutes, in a situation akin to a child's timeout, while Mr. Wulfekuhle continued to vent and made contact with the farmer.

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).

871 IAC 24.26(1) provides:

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:

- (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.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. Id. An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See Olson v. Employment Appeal Board, 460 N.W.2d 865 (Iowa Ct. App. 1990).

The weight of the evidence in the record is sufficient to establish a voluntary quit for good cause based on substantial changes in the conditions of the employment and based separately on intolerable and detrimental working conditions. The weight of the evidence indicates that the

employer unilaterally decided to change Mr. Steffen's pay structure in a way that would substantially reduce Mr. Steffen's pay. After Mr. Steffen had worked 70-80 hours per week for the employer on salary during the employer's busy period, the employer proposed that Mr. Steffen accept a pay arrangement whereby he would make substantially less, based on a workweek that might not exceed 20 hours. The employer presented Mr. Steffen with the alternative of going to work in Kansas for an extended period to continue the same level of employment and income. The weight of the evidence does not support the employer's assertion that the employer was going to have plenty of work for Mr. Steffen going forward. Mr. Steffen promptly quit in response to the proposed changes in compensation. Under the applicable unemployment insurance law, he was obligated to quit in a timely manner to avoid being deemed to have acquiesced in the substantial changes in the conditions of his employment.

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). Use of foul language can alone be a sufficient ground for a misconduct disqualification for unemployment benefits. Warrell v. Iowa Dept. of Job Service, 356 N.W.2d 587 (Iowa Ct. App. 1984). An isolated incident of vulgarity can constitute misconduct and warrant disqualification from unemployment benefits, if it serves to undermine a superior's authority. Deever v. Hawkeye Window Cleaning, Inc. 447 N.W.2d 418 (Iowa Ct. App. 1989). So, too, an employee has the same set of rights to expect decency and civility from the employer.

The weight of the evidence indicates that Lee Wulfekuhle acted as if there were no limitations to what he could say or do to his employee, Mr. Steffen. The evidence indicates that Mr. Wulfekuhle was verbally abusive toward Mr. Steffen on at least two occasions. But the conduct goes beyond mere verbal abuse. The conduct, most clearly demonstrated with the 45-minute timeout, was mentally abusive and was designed to demean and humiliate Mr. Steffen. Mr. Steffen was not obligated to continue in the employment after being a repeat victim of Lee Wuhfekuhle's rage. Mr. Wulfekuhle's enraged and abusive conduct created intolerable and detrimental working conditions that would have prompted a reasonable person to leave the employment.

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

DECISION:

The agency representative's February 1, 2013, reference 01, decision is affirmed. 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs