

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

TODD FITZGERALD  
2206 SE 9<sup>TH</sup> ST  
DES MOINES IA 50315

HYDE TELECOM PARTNERS INC  
9001 HICKMAN RD #300  
URBANDALE IA 50322

Appeal Number: 04A-UI-05740-CT  
OC: 04/25/04 R: 02  
Claimant: Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Todd Fitzgerald filed an appeal from a representative's decision dated May 17, 2004, reference 01, which denied benefits based on his separation from Hyde Telecom Partners, Inc. (Hyde). After due notice was issued, a hearing was held by telephone on June 14, 2004. Mr. Fitzgerald participated personally. The employer participated by Neal Hyde, Owner, and Dale Scritchfield, Executive Vice President.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Fitzgerald was employed by Hyde from October of 2000 until April 30, 2004 as a full-time cable installation technician. On the morning of April 30, he received a telephone call from his supervisor, Jim, regarding a change in his job site. Mr. Fitzgerald indicated they still had work to complete at the site he was on. Jim told him that he needed to be “fucking” working and that he had heard that he stood around for two “fucking” hours on the site. When Mr. Fitzgerald questioned him as to why he would take someone else’s word about him standing around, Jim said he would take the other person’s word over someone who “fucking” lied to him all the time. Mr. Fitzgerald was in his vehicle along with a coworker at the time of the telephone conversation. The coworker was not able to overhear what was being said by Jim.

After the conversation with Jim, Mr. Fitzgerald proceeded to the office where he spoke to Dale Scritchfield. Mr. Scritchfield told him he needed to resolve the issue with Jim because Jim was his supervisor. Jim entered the room but Mr. Fitzgerald left because he was upset. He proceeded to the van and Jim followed, attempting to talk to him. Mr. Fitzgerald proceeded back into the office and Jim followed. Mr. Fitzgerald then returned to the van, retrieved his cellular phone and keys to the van, and returned to the office where he gave the items to Mr. Scritchfield. Mr. Scritchfield suggested that the two meet with Mr. Hyde to have him mediate their differences. However, Mr. Fitzgerald left and called Mr. Hyde on his way home. He told Mr. Hyde that he was quitting because Jim had yelled at him. Mr. Hyde indicated he would look into the matter when he got to the office and get back to him. During their later conversation, Mr. Hyde advised Mr. Fitzgerald that his resignation was being accepted.

Profanity is used at the workplace. Mr. Fitzgerald, himself, has used profanity while at work. The telephone conversation with Jim on April 30 was the sole reason for the quit. Continued work would have been available if Mr. Fitzgerald had not quit.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Fitzgerald was separated from employment for any disqualifying reason. An individual who leaves employment voluntarily is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code Section 96.5(1). Mr. Fitzgerald had the burden of proving that his quit was for good cause attributable to the employer. Iowa Code Section 96.6(2). He quit because Jim used profanity during their telephone conversation of April 30. The work environment was such that the workers, including Mr. Fitzgerald, did use profanity from time to time without repercussions. The conversation was not overheard by any of Mr. Fitzgerald’s peers and, as such, there was no issue of him being reprimanded in front of coworkers. There was no name-calling on Jim’s part. Given the above factors, the administrative law judge concludes that Jim’s conduct was not so outrageous as to justify Mr. Fitzgerald quitting without first giving the employer an opportunity to try to remedy the situation.

When Mr. Fitzgerald spoke to Mr. Scritchfield, he suggested that he and Jim meet with Mr. Hyde to work out their differences. When Mr. Fitzgerald spoke to Mr. Hyde, he told him that he had quit. He quit before giving Mr. Hyde an opportunity to address the problem which was causing him to quit. An individual who leaves employment due to detrimental or intolerable working conditions must first complain to the employer and advise the employer of the intent to quit if the conditions are not corrected. See Cobb v. Employment Appeal Board, 506 N.W.2d

445 (Iowa 1993). This notice allows the employer a reasonable opportunity to try to remedy the problem and salvage the employment relationship. Because Mr. Fitzgerald did not give Hyde a fair and reasonable opportunity to correct the problem before quitting, his quit was not for good cause attributable to the employer. Accordingly, benefits are denied.

DECISION:

The representative's decision dated May 17, 2004, reference 01, is hereby affirmed. Mr. Fitzgerald voluntarily quit his employment with Hyde for no good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/kjf