

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

MELVIN J BANKS
Claimant

APPEAL NO. 18A-UI-08413-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 07/08/18
Claimant: Respondent (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 2, 2018, reference 02, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on the Benefits Bureau deputy's conclusion that the claimant's April 28, 2018 separation was for good cause attributable to the employer. After due notice was issued, a hearing was held on August 29, 2018. Claimant Melvin Banks participated. Marisa Sheldon represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant, which record reflects that no benefits have been disbursed to the claimant in connection with the July 8, 2018 original claim.

ISSUE:

Whether the claimant separated from the employment for a reason that disqualifies him for unemployment insurance benefits or that relieves the employer's account of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Express Services is a temporary employment agency. Claimant Melvin Banks most recently performed work for Express Services in a full-time, temporary, groundskeeping work assignment at the City of Moline, Illinois Parks and Recreation Department. The assignment began on Friday, April 27, 2018 and was intended to last until October 2018. The work hours were 7:00 a.m. to 3:00 p.m. Monday through Friday. Mr. Banks completed his shift on April 27, 2018, but elected not to return for further work in the assignment. Mr. Banks is an African-American person and is from Mississippi. During the shift Mr. Banks worked on April 27, his supervisor in the assignment, a Caucasian man, stated on three occasions that he would need to keep Mr. Banks on a chain or leash. These utterances occurred in the presence of other people, including the supervisor's supervisor, who remained silent. While Mr. Banks was willing and able to perform the work associated with the assignment, Mr. Banks concluded he could not work under the particular supervisor. Mr. Banks discussed the matter with his wife and then notified Express Services Staffing Consultant Alison Campbell that he would not be returning to the assignment. Mr. Banks expressed an interest in other work, but Express Services did not have another assignment for him at that time. On May 3, 2018, Express Services left a message for Mr. Banks regarding a potential assignment. Mr. Banks responded to the message, but the employer had already offered the assignment to another person.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 Iowa Administrative Code rule 871-24.26(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 213 (Iowa 2005).

The evidence in the record establishes a voluntary quit for good cause attributable to the employer. The evidence establishes that Mr. Banks left the City of Moline work assignment in response to racially discriminatory and harassing statements his supervisory directed at him during Mr. Banks' first day in the assignment. A reasonable person would have left the assignment under the circumstances. Mr. Banks requested other work from Express Services, but the employer did not have another assignment for him at the time. Mr. Banks is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The August 2, 2018, reference 02, 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs