

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**THOMAS E SOLBERG**  
Claimant

**APPEAL NO. 13A-UI-07969-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PRIMERA FOODS CORPORATION**  
Employer

**OC: 08/05/12**  
**Claimant: Appellant (1)**

Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Thomas Solberg filed a timely appeal from the June 27, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 13, 2013. Mr. Solberg participated. Emilio Escobar represented the employer.

**ISSUE:**

Whether Mr. Solberg's voluntary quit was for good cause attributable to the employer. It was not.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Thomas Solberg was employed by Primera Foods Corporation as a full-time night shift supervisor from September 2012 until June 11, 2013, when he voluntarily quit. Mr. Solberg quit after the employer issued a final reprimand to one of Mr. Solberg's subordinates, rather than discharge the subordinate from the employment.

On June 7, the subordinate had refused Mr. Solberg's directive to evacuate the work area and to report to the roll call area. In connection with the refusal, the subordinate had also made an offensive gesture toward Mr. Solberg by raising his middle finger to Mr. Solberg as he was walking away from Mr. Solberg. The subordinate had not threatened Mr. Solberg in any way. The subordinate recognized he had crossed the line and went to the office of Emilio Escobar, Plant Manager, to report his own misconduct. Mr. Escobar did not condone the subordinate's conduct. A short while later, Mr. Solberg met with Mr. Escobar. Mr. Solberg told Mr. Escobar about the offensive gesture and the failure to follow the directive to evacuate the work area. Mr. Solberg did not mention anything to Mr. Escobar about being threatened by or in fear of the subordinate.

Mr. Escobar believed there was a mutual lack of respect between Mr. Solberg and the subordinate. Mr. Solberg was new to the company, lacked familiarity with some of the employer's production processes, and had previously given the subordinate directives that were not helpful. In addition, the subordinate believed that Mr. Solberg had started a rumor about

him breaking a particular machine just so the subordinate could portray himself as a hero by fixing the machine. Mr. Escobar had his own concerns about Mr. Solberg's lack of familiarity with the employer's production processes and lack of credibility with subordinates. Mr. Escobar had recently spoken to Mr. Solberg returning to his original five-day work week, so that Mr. Solberg could become more familiar with the employer's processes and gain credibility amongst subordinates. The employer had previously allowed Mr. Solberg a four-day work week as a temporary accommodation, so that Mr. Solberg could assist an ill family member. Mr. Solberg's absence from one production shift per week had hindered his mastery of production processes and hindered his ability to build credibility with subordinates. The employer had not required Mr. Solberg to return to the original work schedule.

On June 10, Mr. Escobar and a human resources representative met with the subordinate on and issued the final reprimand. Mr. Solberg was off work that day. The employer warned the subordinate that he would face discharge if the conduct reoccurred. The subordinate had agreed to apologize to Mr. Solberg.

On June 11, Mr. Solberg was supposed to start his work day with a supervisors' meeting with Mr. Escobar and other production supervisors. Instead of reporting to the meeting, Mr. Solberg went to the human resources representative and asked whether the subordinate had been discharged. When Mr. Solberg learned that the subordinate had been reprimanded, but not discharged, Mr. Solberg tendered his immediate resignation.

#### **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 24.25(6), (21) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa

Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(6) The claimant left as a result of an inability to work with other employees.

(21) The claimant left because of dissatisfaction with the work environment.

The evidence in the record indicates that Mr. Solberg voluntarily quit because he disagreed with the employer's decision to reprimand, but not discharge, the misbehaving subordinate from the employment. Mr. Solberg quit because he felt the employer did not back him up as a supervisor. Mr. Solberg deemed anything short of discharging the offending subordinate unacceptable. On the other hand, the employer had heard both sides and factored Mr. Solberg's inexperience and work relationships with the subordinates when deciding what discipline to issue to the offending subordinate. The employer had issued a final warning to the subordinate and the employee had agreed to apologize to Mr. Solberg. While that might not have been the outcome Mr. Solberg wanted, the decision was within the employer's authority to make. Mr. Solberg wanted the harshest reprimand available, but the employer stopped short of that. The weight of the evidence does *not* support Mr. Solberg's assertion that the subordinate threatened him in any way or that Mr. Solberg was in fear of the subordinate. One would expect Mr. Solberg to have raised those concerns with Mr. Escobar when Mr. Solberg spoke to Mr. Escobar on June 7. The weight of the evidence indicates that Mr. Solberg made no such mention of feeling threatened by or being in fear of the subordinate on that day. The evidence fails to establish working conditions that rose to the level of intolerable or detrimental working conditions, despite Mr. Solberg's convenient use of those terms during his testimony. The evidence indicates instead a voluntary quit due to dissatisfaction with the way the employer ran the workplace. The voluntary quit was without good cause attributable to the employer. Mr. Solberg is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits.

#### **DECISION:**

The agency representatives June 27, 2013, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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