

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BESHAR S GOODWIN
Claimant

KAUFFMAN ENGINEERING INC
Employer

APPEAL 16A-UI-08924-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/24/16
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the August 12, 2016, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 1, 2016. The claimant participated personally. The employer participated through Jodie Rusk, human resources. Employer exhibit 1 was received into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit the employment with good cause attributable to the employer?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a wave operator and was separated from employment on June 22, 2016, when he quit the employment.

On July 22, 2016, the claimant had a confrontation with his immediate supervisor, Russ Lang. Mr. Lang confronted the claimant about a new product that was being run, and had initially failed. Mr. Lang asked, in front of other employees, "what did you fuck up now?" He then commented that the claimant was "fucking up a lot of boards", as the claimant was responsible for soldering computers. During this same exchange, the claimant bent down to retrieve something and as he came up, Mr. Lang took his finger and physically tapped it against the forehead of the claimant, stating "think, think, think." This continued until the claimant took

Mr. Lang's wrist and removed the hand from his forehead. Mr. Lang apologized shortly after and the claimant attempted to let it go, to avoid further confrontation.

Within 15 minutes of the confrontation, Mr. Lang again approached the claimant and said something to the effect of "If it (the system being worked on) comes out wrong, I'll put my foot up your ass." The claimant reported the incident to a human resources representative, as both the claimant's plant manager, Mike McGregor, and immediate human resources specialist, Jodie Rusk, were on vacation that day. The representative had a meeting with both parties and informed the claimant an outcome would be discussed. The claimant could not transfer to another department to avoid Mr. Lang, given the size of the company and premises. The claimant continued to be upset by the incident, as this was not the first incident with Mr. Lang.

Approximately two weeks prior to July 22, 2016, Mr. Lang needed help unloading a truck and referred to the claimant by way of "needing a weak mind with a strong back." The claimant corrected him by saying, "I'm Beshar (Goodwin)." When the claimant reported the incident to plant manager, Mike McGregor, he said, "don't mind Grumpy Bear." Approximately a month before that incident, Mr. Lang had confronted the claimant in the presence of employees when the claimant accidentally signed his name on a log on the line above his designated space, and for an employee named Abby. Mr. Lang said to the claimant, "What's your G-d damn name? Is it Abby?" The claimant responded that he had signed his signature accidentally in her space and would correct it. When the claimant reported the incident to Mr. McGregor, he responded with a reference of "Grumpy Bear" and that he would speak to Mr. Lang.

After July 22, 2016, the claimant did not return to work and did not notify the employer he would not return unless Mr. Lang was discharged. (Mr. Lang ended up being demoted, not discharged for the incidents on July 22, 2016). Rather, he no-call/no-showed on July 26 and 27, 2016, triggering a call from Ms. Rusk to inquire about the claimant's job status. Even though the claimant had technically "pointed out" for attendance purposes, the employer offered to place the claimant on a "last chance agreement" if he returned and that it would resolve the issue with Mr. Lang. The claimant was uncomfortable returning and declined (Employer exhibit 1), thereby confirming his intent to quit the employment.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$1,015.00, since filing a claim with an effective date of July 24, 2016. The administrative record also establishes that the employer did not participate in the August 5, 2016 fact-finding interview.

REASONINGS AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment with good cause attributable to the employer.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.26(4) 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:

(4) The claimant left due to intolerable or detrimental working conditions.

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. "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (Fla. App. 1973). 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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the weight of the evidence in the record establishes intolerable and/or detrimental working conditions that would have prompted a reasonable person to quit the employment without notice.

"The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made." *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990). Just as an employer is entitled to expect the use of civil language from employees, an employee may expect civil treatment from their employer. In this case, the claimant's immediate supervisor repeatedly embarrassed him in front of employees, used profanity, belittled him, and even went so far as to physically touch him on July 22, 2016, telling him to "think, think, think." No employee should have to endure intimidation, belittlement, embarrassment, or physical touching and bullying behavior in order to retain employment or avoid disqualification from unemployment insurance benefits. Mr. Lang created an intolerable work environment for the claimant and that behavior gave rise to a good cause reason for leaving the employment. Benefits are allowed.

Because the claimant is eligible for benefits, the issues of overpayment and employer relief from charges are moot.

DECISION:

The August 12, 2016, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible. The claimant has not been overpaid benefits. The employer is not relieved of charges.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/pjs