

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT K ZIATY
Claimant

APPEAL NO. 13A-UI-03195-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 02/03/13
Claimant: Appellant (2)

Iowa Code Section 96.5(1)(a) – Voluntary Quit

STATEMENT OF THE CASE:

Robert Ziaty filed a timely appeal from the March 5, 2013, reference 02, decision that denied benefits. After due notice was issued, an in-person hearing was held on April 23, 2013. Mr. Ziaty participated and presented additional testimony through Christopher Ziaty and Riddel Mboumba. The employer did not appear for the hearing.

ISSUE:

Whether Mr. Ziaty separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Robert Ziaty was employed by Tyson Fresh Meats, Inc., as a full-time production worker from 2008 until May 2012, when he voluntarily quit. Mr. Ziaty's third and final supervisor discriminated against Mr. Ziaty based on his ethnicity and country of origin. Mr. Ziaty is from Liberia and struggles with American English. Mr. Ziaty's supervisor told Mr. Ziaty that African people smell. The supervisor sent another employee to smell Mr. Ziaty. The supervisor told Mr. Ziaty that Mr. Ziaty could not use the restroom. Mr. Ziaty complained three times to the human resources department about the supervisor's conduct. The human resources department did nothing to respond to Mr. Ziaty's concern. Instead, the human resources representative noted that Mr. Ziaty had been a minute late on one occasion. The supervisor's discriminatory conduct continued unabated. The supervisor mocked Mr. Ziaty's inability to speak American English. The supervisor told Mr. Ziaty that if he complained again, he would cause Mr. Ziaty to lose his job. The supervisor told Mr. Ziaty that if he did not like the working conditions, he could leave. After multiple attempts to remedy the situation, Mr. Ziaty did indeed leave the employment and did not return.

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).

The evidence in the record indicates that Mr. Ziaty's supervisor created intolerable and detrimental working conditions for Mr. Ziaty. The evidence indicates that the supervisor discriminated against Mr. Ziaty based on his ethnicity and his country of origin. A reasonable person in Mr. Ziaty's situation would have left the employment. Mr. Ziaty's voluntary quit was for good cause attributable to the employer. Mr. Ziaty is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The agency representative's March 5, 2013, reference 02, decision is reversed. 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

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