

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

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Appeal Number: 04A-UI-12177-LT
OC: 10-17-04 R: 03
Claimant: Appellant (2)

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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Iowa Code §96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the November 5, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 8, 2004. Claimant did participate. Employer did participate through Adrianna Cobos.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time supervisor through October 11, 2004 when he quit. On September 29, Ed Bell, Superintendent, called claimant to his office and said, "I'd rather have someone fucking my wife than standing around." Claimant told him that trainees must watch others doing the job they are to be trained on so they can learn the job. Claimant went on

vacation the following week. Upon his return, he said Aaron Menefee told him that the trainees were standing around again not working. Claimant checked with Menefee who said he did not say that.

Claimant told John Hall, Supervisor, repeatedly he would quit if these issues with Bell were not resolved. Bell harassed claimant and others until he fired them or they quit. Bell harassed claimant over expenses after claimant reported a ticket expense written to his department that appeared to be an inappropriate charge. Bell then accused claimant of doing it himself. Claimant met production and expense standards. Bell was also inconsistent in his directives and told claimant to stay away from the pack off area if there was a situation, but then expected claimant to have intervened and chastised him for not taking care of it. Employer did not dispute claimant's recollection of the events.

REASONING AND CONCLUSIONS OF LAW:

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

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.

871 IAC 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.

Where claimant was required to work in two separate position and received contradictory instructions from two different supervisors and quit after being reprimanded for his job performance was entitled to benefits. McCunn v. EAB, 451 N.W.2d 510 (Iowa App. 1989).

While claimant was subject to differing information from different supervisors, he was issued contradictory instructions from only the superintendent who also harassed and chastised him for not following one or the other of the instructions or for following established training procedures and policies. Claimant did meet the requirements Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993) by reporting his complaints to his supervisor. Since the superintendent was the offender, claimant's supervisor would not have been able to resolve the situation even after claimant reported his complaints. Furthermore, if employers can expect employees not to use "profanity or offensive language in a confrontational, disrespectful, or name-calling context" according to Myers v. EAB, 462 N.W.2d 734 (Iowa App. 1990), an employee is entitled to that same courtesy. Bell's repeated harassment and belittlement of claimant and contradictory instructions amounted to intolerable working conditions and rendered the separation attributable to the employer. Benefits are allowed.

DECISION:

The November 5, 2004, reference 01, decision is reversed. The claimant voluntarily left his employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

dml/kjf