

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEMARCUS LUMPKINS
Claimant

APPEAL NO: 09A-UI-08526-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COLORFX INC
Employer

OC: 05/03/09
Claimant: Appellant (2)

Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Lemarcus Lumpkins (claimant) appealed an unemployment insurance decision dated June 5, 2009, reference 01, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Colorfx, Inc. (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 30, 2009. The claimant participated in the hearing with Tyler Gerard. The employer participated through Chetney Mortland, Human Resources Administrator and Supervisor Dan Jones. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time machine operator from October 4, 2007 through April 6, 2009 when he voluntarily quit due to intolerable and detrimental working conditions. Five employees complained to the employer about supervisor Dan Jones' abusive treatment. It was most recently brought to human resources on March 26, 2009. Mr. Jones used profanity towards the employees, made insulting and derogatory comments towards the employees, and refused to answer questions or offer assistance. He frequently made comments like, "what kind of fucking idiot did this" and "what the fuck am I supposed to do with this?"

Additionally, he glared at the employees and showed favoritism towards another employee named Steve who was his friend. Mr. Jones authorized Steve to go get him lunch without having Steve punch out on the time clock. This was done frequently and something was placed in the door jamb to keep it open so that Steve did not have to use his identification card to enter back into the building. The five employees reported the condoned time fraud and the continued

harassment from Mr. Jones but did not want the employer to disclose who was making the complaint, as the work environment was bad enough without any further retribution.

The human resources administrator testified she began an investigation. The five employees knew that Mr. Jones had been made aware of their complaint since Steve stopped committing time fraud the next day and Mr. Jones' harassment intensified. Steve was subsequently discharged but Mr. Jones denied all culpability with regard to the time fraud so only received a disciplinary warning. The employer appeared to take no action with regard to Mr. Jones' harassment and mistreatment of his employees. Tyler Gerard went back to human resources and reported that things had not changed but had actually become worse but again there was no obvious action taken. The claimant voluntarily quit on April 6, 2009 after further harassment by Mr. Jones about some work the claimant was performing. Four of the five employees that complained to the employer are no longer working there but Mr. Jones continues to be employed. The human resources administrator testified that Mr. Jones subsequently received a written warning for lack of professionalism.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits.

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.

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.

The claimant voluntarily quit due to detrimental and intolerable working conditions. 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 claimant voluntarily quit due to continued harassment from his supervisor. The evidence is overwhelming that Supervisor Dan Jones was abusive towards his employees and the employer failed to appropriately address the problem. Any reasonable person would have quit under like circumstances. It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. He has satisfied that burden and benefits are allowed.

DECISION:

The unemployment insurance decision dated June 5, 2009, reference 01, is reversed. The claimant voluntarily quit his employment with good cause attributable to the employer and is qualified to receive unemployment insurance benefits, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css