

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DUSTIN P MCCUTCHEON
Claimant

SCHOON BACKHOE INC
Employer

APPEAL 15A-UI-07234-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/31/15
Claimant: Respondent (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The employer filed an appeal from the June 15, 2015, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 28, 2015. Claimant participated. Employer participated through Owner/Operator Roger Schoon and Operator Adam Schoon.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a laborer from November 2013, and was separated from employment on May 26, 2015, when he voluntary quit.

Throughout claimant's employment, Roger Schoon raised his voice at claimant on almost a daily basis. At times, Roger Schoon raised his voice at claimant because they were working around loud equipment. At other times, Roger Schoon raised his voice at claimant because he was unhappy with his work performance. At times, Roger Schoon yelled at claimant while shaking his index finger. On one occasion, Roger Schoon yelled at claimant to the point where claimant broke down in tears. Claimant asked Roger Schoon not to yell at him on several occasions.

Throughout claimant's employment, Adam Schoon raised his voice at claimant and called him an "idiot" on at least five occasions. On one occasion, Adam Schoon publicly dressed claimant down in front of a group of local firefighters.

Claimant was distressed by the way he was treated by employer, but did not quit his employment earlier because he enjoyed working with the equipment and wanted to provide for his family.

Claimant was scheduled to work at 7:30 a.m. each morning. Claimant drove himself to the worksite each day.

On Thursday, May 21, 2015, claimant overslept and did not arrive for work in a timely manner. Adam Schoon sent claimant a text message and tried to call him. After getting no response, Adam Schoon drove to claimant's personal residence. As Adam Schoon was walking to claimant's door, he stated, "Wake up, butter cup." Adam Schoon then knocked at the door and spoke with claimant's wife. Claimant's wife informed Adam Schoon that claimant was still sleeping. Adam Schoon then walked back to his vehicle, loudly stating, "All you want to do is fucking sleep. You don't want to get up and work. You want to just keep your lazy ass in bed. Whatever, I don't want you here anyway." Adam Schoon then drove away and claimant did not go into work.

On Tuesday, May 26, 2015, claimant went into work and resigned his employment. Claimant explained to Roger and Adam Schoon he could no longer tolerate the way he was being treated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes 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.

"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 Comm'n*, 277 So.2d 827 (Fla. App. 1973).

In this case, claimant left the employment with good cause attributable to the employer. Employer's argument that claimant's experience of being yelled at on almost a daily basis is typical of most places of employment is misplaced. In fact, most employers address dissatisfaction with their employees' work performance by using other methods, such as discussion in a regular tone of voice, written warnings, or suspensions. A reasonable person would not tolerate being yelled at on a daily basis.

Moreover, a reasonable person would not tolerate his employer coming to his home and yelling obscenities while walking down his driveway because he was late for work. "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). Inasmuch as an employer can expect professional conduct and language from its employees, claimant is entitled to a working environment without being the target of abusive, obscene, name-calling. An employee should not have to endure bullying or a public dressing down with abusive language directed at them, either specifically or generally as part of a group, in order to retain employment any more than an employer would tolerate it from an employee.

DECISION:

The June 15, 2015, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided claimant is otherwise eligible.

Christine A. Louis
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Decision Dated and Mailed

cal/pjs