

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DWAYNE A MASKER
Claimant

APPEAL NO: 15A-UI-14197-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KJERGAARD FARMS
Employer

OC: 11/15/15
Claimant: Appellant (2)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 16, 2015 (reference 01) decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on January 19, 2015. The claimant participated in the hearing. Brian Kjergaard, Co-Owner, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

ISSUE:

The issue is whether the claimant voluntarily left his employment for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time farm equipment operator for Kjergaard Farms from June 1, 2015 to November 6, 2015. He voluntarily quit after an argument with the employer.

On November 5, 2015, the claimant was told to watch a grain bin closely as it was being filled. The claimant added one load after he asked the hired hand coming down the steps of the bin if his load would fit and was assured it would. He was then instructed to go pick up a truck in Avoca. When he returned approximately one hour later the bin had overflowed.

The following morning when the employer learned the bin overflowed he yelled at the claimant using profanity; calling him a "motherfucker," a "stupid fucker," a "lazy motherfucker," and a "fucking momma's boy," before spitting in the claimant's face at which point the claimant walked off the job. The employer said, "Where are you going motherfucker?" and the claimant said he was getting his personal items and leaving, and the employer said the claimant was not driving any of his vehicles. The claimant stated he never asked to use one of his vehicles and proceeded to walk from the farm. The employer tried to call the claimant that afternoon but the claimant refused to take his call. The employer then sent the claimant an email stating he failed to follow a direct order, lied about his ability to check the bin, and was no longer employed effective November 6, 2015 because he walked off the job without written notice.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes the claimant voluntarily left his 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.

The law presumes a claimant has left employment with good cause when he quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). It would be reasonable for the employee to inform the employer about the conditions the employee believes are intolerable or detrimental and to have the employee notify the employer that he intends to quit employment unless the conditions are corrected. This would allow the employer a chance to correct those conditions before a quit would occur. However, the Iowa Supreme Court has stated that a notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions. Hy-Vee, Inc. v. Employment Appeal Board and Diyonda L. Avant, (No. 86/04-0762) (Iowa Sup. Ct. November 18, 2005).

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).

While the employer was upset and angry with the claimant's work performance, regardless of whether the claimant failed to follow a direct order in watching the bin to make sure it did not overflow, the employer had no right to unleash a profanity-laced tirade against the claimant that ended with the employer spitting in the claimant's face. No employee should be subjected to that behavior from their employer, irrespective of whatever offense the employer deems he committed. The claimant subsequently quit due to the employer's actions. Consequently, the administrative law judge concludes the claimant has established his leaving was for good cause attributable to the employer. Therefore, benefits are allowed.

DECISION:

The representative's decision dated December 16, 2015 (reference 01) is reversed. The claimant voluntarily quit with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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