

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DANNY R GREEN
Claimant

SIMONSEN INDUSTRIES INC
Employer

APPEAL 16R-UI-12063-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/14/16
Claimant: Respondent (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the September 1, 2016, (reference 01) unemployment insurance decision that allowed benefits. A hearing was conducted on September 23, 2016 before administrative law judge, Julie Elder. The claimant did not participate, and successfully requested reopening, and the Employment Appeal Board remanded the matter for a new hearing to allow the claimant to participate. The parties were properly notified about the hearing. A telephone hearing was held on November 29, 2016. The claimant participated. The employer participated through Joel Johnson, plant manager.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit the employment with good cause attributable to the employer?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a welder and was separated from employment on August 16, 2016, when he quit the employment without notice. Continuing work was available.

On August 15, 2016, the claimant was performing job duties in his work area, when he noticed his co-worker, Rocky Dunkelburger, struggling to work with an auger. After several minutes went by, the claimant observed Mr. Dunkelburger throw his hammer and punch a fan in frustration. The claimant ultimately went to Mr. Dunkelburger to help him with the auger.

The next morning, prior to the shift starting, the claimant, Mr. Dunkelburger and Tim Nelson, a lead worker, were socializing prior to the shift start at 6:00 a.m. The claimant inquired about what kind of day Mr. Dunkelburger was having and referenced his frustrations from the day before. The employer reported the claimant called Mr. Dunkelburger “stupid”, which he denied. Neither Mr. Dunkelburger nor Mr. Nelson attended the hearing or furnished a written statement for the hearing. The undisputed evidence is that Mr. Dunkelburger then became angry, called the claimant a “liar” and yelled, before picking up a bow pin hammer. During the course of the altercation, Mr. Dunkelburger referenced shutting the claimant up, and “bashing your head in”, stated “go ahead and open your mouth, I’ll shove the hammer down your throat”, that he would “bash his teeth in” and “kick his ass.” There was no evidence that Mr. Dunkelburger was joking at any time as he stood a few feet away from the claimant with the hammer in hand, and the claimant sat. Mr. Nelson did not intervene. When the altercation ended, the claimant went to his work station and a few minutes later, Joel Johnson, plant manager, walked by him. The claimant reported to Mr. Johnson what happened and feeling concerned for his safety. Per policy, Mr. Johnson initiated an investigation, interviewing the parties present for the altercation. Mr. Dunkelburger was not sent home pending investigation and allowed to work. The claimant went to his supervisor, Leonard, and reported he wanted to go home. He was advised to “calm down and let Joel (Johnson) do his investigation.” At the end of the day, Mr. Johnson informed the claimant that Mr. Dunkelburger would be suspended for three days in response to the incident. The claimant indicated he would not continue work if Mr. Dunkelburger remained employed due to safety concerns and quit the employment, effective immediately.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$1680.00, since filing a claim with an effective date of August 14, 2016. Benefits ceased following the hearing decision from September 23, 2016. The administrative record also establishes that the employer did participate in the fact-finding interview on August 31, 2016, by way of Joel Johnson.

REASONINGS AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant’s separation from the employment was with good cause attributable to the employer.

Iowa Admin. Code r. 871-24.26(2) 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:

- (2) The claimant left due to unsafe working conditions.

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.

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. “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 Commission*, 277 So.2d 827 (Fla. App. 1973). In the case of a resignation because of suspected illegal or unethical corporate behavior, the proper inquiry is whether a person of reasonable prudence would, in like circumstances, believe that improper or illegal activities were occurring at the place of work and that these activities necessitated the individual's quitting. *O'Brien v. Employment Appeal Board*, 494 N.W.2d 660 (Iowa 1993).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* After assessing the credibility of the claimant who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the weight of the evidence in the record establishes illegal, intolerable and/or detrimental working conditions that would have prompted a reasonable person to quit the employment without notice.

An employer has a responsibility to protect the safety of its employees, from potentially unsafe, or violent conduct in the workplace. Mr. Dunkelburger's threats to the claimant of "bashing your head in", "go ahead and open your mouth, I'll shove the hammer down your throat", and that he would "kick his ass" were not made in fun or joking fashion. Regardless if the claimant called Mr. Dunkelburger "stupid", Mr. Dunkelburger's response of picking up a hammer and approaching the claimant was wholly unacceptable. The employer had an obligation to take the claimant's concerns for his safety seriously, in an era where violent acts at workplaces and against co-workers are real.

The administrative law judge concludes the employer's response to allow Mr. Dunkelburger to continue working right after the altercation and not discharging him, in light of his real threat of violence is troubling. The administrative law judge is further persuaded in light of Mr. Dunkelburger's outburst on August 15, 2016 of throwing the hammer, combined with his threats to the claimant reasonably placed the claimant in fear of his safety and it was not reasonable to expect the claimant to continue to work with Mr. Dunkelburger after the August 16, 2016 incident. No employee should have to endure intimidation, physical and emotional tantrums, name-calling, and bullying behavior in order to retain employment or avoid disqualification from unemployment insurance benefits. Mr. Dunkelburger and the employer's response to Mr. Dunkelburger's conduct created an intolerable work environment for the claimant and that behavior gave rise to a good cause reason for leaving the employment. Benefits are allowed.

Because the claimant is allowed benefits, the issues of overpayment and relief of charges are moot.

DECISION:

The September 1, 2016, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible and the benefits withheld shall be paid. The

claimant has not been overpaid benefits. The employer's account is not relieved of charges associated with the claim.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/rvs