

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER TILLEY

Claimant

APPEAL NO. 08A-UI-10527-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

PROGRESSIVE CONCRETE INC

Employer

**OC: 10-12-08 R: 03
Claimant: Respondent (1)**

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 4, 2008, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on November 25, 2008. The claimant participated in the hearing. Michael Barnes, President/Owner, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left his employment with 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 concrete laborer for Progressive Concrete from July 17, 2008 to October 1, 2008. The claimant called his foreman the afternoon of October 1, 2008, and told him he was voluntarily leaving his employment because he “couldn’t deal with” (co-worker Jovo Povich’s) harassment. Mr. Povich called the claimant “fat boy” whenever they worked together, which was generally once or twice a week, and on one occasion told the claimant to get off the phone with his “fat bitch wife.” On September 30, 2008, Mr. Povich wanted to fight with the claimant and the claimant became very angry but did not respond. The foreman was present and laughed at how angry the claimant was due to Mr. Povich’s comments but did not take any action to stop Mr. Povich’s behavior or statements. The claimant had told President/Owner Michael Barnes that he “could not stand” working with Mr. Povich, but Mr. Barnes did not recognize the extent of the problem and consequently took no action but instead relied on his supervisors to keep him apprized of the various goings on at the job sites. The claimant’s supervisor was aware of the claimant’s feeling about the situation and tried to keep him on his crew and away from Mr. Povich, but that was not always possible and the claimant was still forced to work with Mr. Povich once or twice a week. Because the claimant believed the employer would not resolve the situation and Mr. Povich would not stop on his own, he submitted his resignation September 30, 2008.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without 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.

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 from whom the employee has separated. 871 IAC 24.25. Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. Mr. Povich called the claimant "fat boy" on several occasions and referred to his wife as a "fat bitch" once. Finally, Mr. Povich insisted he wanted to fight the claimant October 30, 2008, and rather than stop the situation, the foreman laughed. "Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. Uniweld Products v. Industrial Relations Commission, 377 So.2d 827 (Florida App. 1973). It was not unreasonable for the claimant to take exception and be offended by being called "fat boy" every time he worked with Mr. Povich, and the claimant does not appear to be overly sensitive. Under these circumstances, the administrative law judge concludes that the claimant's leaving was for good cause attributable to the employer as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The November 4, 2008, reference 01, decision is affirmed. The claimant voluntarily left his employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw