

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ARLAN FLAUGH
Claimant

APPEAL NO: 13A-UI-07068-B

**ADMINISTRATIVE LAW JUDGE
DECISION**

FRC COMPONENTS PRODUCTS INC
Employer

OC: 12/23/12
Claimant: Appellant (1)

Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Arlan Flaugh (claimant) appealed an unemployment insurance decision dated June 6, 2013, reference 01, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with FRC Components Products, Inc. (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Mason City, Iowa on August 5, 2013. The claimant participated in the hearing. The employer participated through Sheila Ponce, Human Resources Manager; Susan Raji, Operations Manager; and Mark Hestness, Supervisor. Employer's Exhibits One and Two were admitted into evidence.

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 test technician from August 24, 2004 through May 15, 2013 when he voluntarily quit telling his supervisor it was a constructive discharge. On that day, the claimant went to his supervisor about a co-worker's radio being too loud and he contends the supervisor said he was not going to take action against the co-worker. The supervisor denies that response and testified he was going to take care of it but was unable to do so when the claimant entered his office. In the meantime, the supervisor received an urgent request from their main client to provide some data sheets. The supervisor went to the claimant and gave him some data sheets on which he could record the data. The claimant became "belligerent" about doing it and refused to record the data. The supervisor explained that this was the highest priority right then and needed to be done. The claimant said that his job description was changing and the supervisor said it was not a change and was not unusual for a test technician to record data. The claimant finally said he would do it but it better not happen again and the supervisor followed up on that and asked him what he meant. The claimant picked up his personal items and voluntarily quit.

The claimant testified his separation was a constructive discharge and that he quit due to hostile work conditions and “mobbing.” The hostile work conditions were created by Joe, the claimant’s lead worker. The claimant could not definitively point to any other employees who might have created the mob mentality. He suspected co-worker “Jeannie” said something to the employer about him but he is not aware of anything she said. He contends his supervisor whispered, “Leave or quit” in his ear but the supervisor denied the contention. The claimant could not provide a date or any further details as to when this was done. The supervisor also questioned him as to his locations a couple times but let it go after the claimant explained what he was doing. One unnamed co-employee told the claimant the supervisors were watching him and the claimant testified that creates an intolerable work environment.

With regard to how Joe treated him, Joe frequently told him to “look enthused” and Joe “rapped” on his desk to get his attention. The claimant found this intimidating and annoying. Joe’s favorite saying was, “You did what to whose what for how many what?” The claimant considered that an effort to put him down as a “sexual deviant.” He did not offer further explanation as to why he thought the saying meant that he was a sexual deviant. The claimant said Joe told him to quit if he did not like it there and to go “F” himself. Joe also told the claimant he was a “F-ing” idiot and told the claimant to go “F” himself. The claimant had complained to his supervisor about Joe and the supervisor issued a letter to both individuals addressing what was and what was not acceptable. The claimant did not ever complain to human resources about Joe because he said he knew they would do nothing.

A meeting was held in the fall of 2012 regarding the claimant’s use of the employer’s computer and internet to search for job postings outside the employer’s business. He subsequently taped those job postings on the wall near his work station. His supervisor and human resources manager met with him to discuss the problem. The claimant was upset that there was no promotion opportunities but he was at the top of the pay scale with the exception of a maintenance position. A maintenance position had opened up several years earlier but the claimant failed to apply for it. He does not agree with the employer’s pay scale. The claimant decided in that meeting that he was going to quit but he opted to wait for something else to happen so he could get unemployment benefits.

The claimant also said he quit because he was asked to perform jobs not within his job duties. However, he admitted he performed the jobs to show the employer he was capable of performing them even though he learned in the fall of 2012 that there were no promotional opportunities. The employer witnesses testified that the duties did fall within the claimant’s job description and that the claimant never complained about doing work outside his job duties, with the exception of the final day.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant’s voluntary separation from employment qualifies him to receive unemployment insurance benefits. He is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

The claimant quit on May 15, 2013 due to hostile and intolerable work conditions. He contends that his separation was a constructive discharge but the evidence does not support that contention. The Iowa Supreme Court has recognized constructive discharge in employment law cases. While not recognizing it as a cause of action in and of itself, a good description of the concept is found in *Balmer v. Steel*, 604 N.W.2d 639 (Iowa, 2000).

"In general, employment relationships are terminated by resignation or discharge. *Turner v. Anheuser-Bush, Inc.*, 876 P.2d 1022, 1025 (Cal. 1994). An employee voluntarily severs the relationship by resigning; the employer does so by discharging the employee. *Id.*

As one court aptly explained, [a]ctual discharge carries significant legal consequences for employers, including possible liability for wrongful discharge. In an attempt to avoid liability, an employer may refrain from actually firing an employee, preferring instead to engage in conduct causing him or her to quit. The doctrine of constructive discharge addresses such employer-attempted "end runs" around wrongful discharge and other claims requiring employer-initiated terminations of employment. *Id.* Simply put, courts over the years have attempted to prevent employers' "end runs" around the law by casting an employee's quitting as involuntary: Although the employee may say, "I quit," the employment relationship is actually severed involuntarily by the employer's acts, against the employee's will. As a result, a constructive discharge is legally regarded as a firing rather than a resignation. A constructive discharge occurs when an employer deliberately renders the employee's working conditions so intolerable that the employee is forced to quit his or her job. *Turner*, 876 P.2d at 1025. Constructive discharge therefore provides a mechanism to avoid the technical requirement that wrongful discharge be based on an employer-initiated discharge." *Balmer*, 604 N.W.2d at 641.

In the case herein, the employer did not want the claimant to quit and the supervisor even told him that the data request was not a reason to quit his employment. 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).

Ordinarily, "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code § 96.2. *O'Brien v. EAB*, 494 N.W.2d 660, 662 (Iowa 1993) (citing *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith." *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986). "[C]ommon sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination." *Id.*

The evidence provided by the claimant does not rise to an intolerable or detrimental work environment. "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*, 277 So.2d 827 (Florida App. 1973).

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 not satisfied that burden. Benefits are denied.

DECISION:

The unemployment insurance decision dated June 6, 2013, reference 01, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs