

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICKY K WESTFIELD
Claimant

APPEAL NO. 09A-UI-10199-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED
Employer

**Original Claim: 05-24-09
Claimant: Respondent (1)**

Iowa Code § 96.5(1) – Voluntary Leaving
871 IAC 24.26(4) – Intolerable Working Conditions

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 7, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 25, 2009. The claimant did participate. The employer did participate through Sandy Matt, Human Resources Specialist.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as an over the road trucker driver, full-time, beginning October 3, 2007, through May 22, 2009, when he voluntarily quit.

The claimant was in New Jersey to make a delivery and was at a company loading dock at approximately 4:00 a.m. Iowa time. The loading dock supervisor would not let the claimant unload because he did not have the proper paper work and permits to haul alcohol in the state of New Jersey. The claimant called the employer to inquire about getting the proper paper work and permits and some unknown employee answered the telephone and spoke to him. The unknown employee swore at the claimant and called him a “nigger.” Later that morning, Scott Nelson faxed the claimant the paperwork he needed to make the delivery. The claimant quit his employment after making the delivery because of the way that the other employee was speaking to him.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment with 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.

871 IAC 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.

No intent-to-quit requirement is part of rule 871-24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that because the intent-to-quit requirement was added to 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

"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. EAB, 462 N.W.2d 734 (Iowa App. 1990). An employer is not required to endure profanity from employees and no employee should be required to endure racial slurs from coworkers. The claimant was subjected to racial slurs and profanity directed at him by a coworker who created an intolerable work environment that gave rise to a good-cause reason for leaving the employment. Benefits are allowed.

DECISION:

The July 7, 2009, reference 01, decision is affirmed. The claimant voluntarily left his employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw