

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CLINTON A VARDAMAN
Claimant

APPEAL NO. 16A-UI-11640-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

J F EDWARDS CONST CO
Employer

OC: 04/10/16
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Clinton Vardaman filed a timely appeal from the October 19, 2016, reference 02, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on an agency conclusion that Mr. Vardaman voluntarily quit on September 26, 2016 without good cause attributable to the employer. After due notice was issued, a hearing was held on November 10, 2016. Mr. Vardaman participated. Shelly Hitzler, Director of Human Resources, represented the employer.

ISSUE:

Whether Mr. Vardaman's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Clinton Vardaman was employed by J. F. Edwards Construction Company as a full-time heavy equipment operator during multiple distinct periods. The most recent period of employment began in May 2016 and ended on September 26, 2016, when Mr. Vardaman voluntarily quit. Prior to August 22, 2016, Mr. Vardaman had worked under Jobsite Superintendent Chris Keegan. Effective August 22, 2016, Mr. Vardaman began working at a jobsite supervised by Jobsite Superintendent Leon Brooks. Mr. Vardaman last performed work at the jobsite on September 24, 2016. On September 26, 2016, Mr. Vardaman notified Mr. Brooks that he would not be returning to work because of issues with his blood pressure. Mr. Vardaman asserts that he quit because Mr. Brooks was in the habit of yelling at employees on the jobsite. Mr. Vardaman cannot recount the date or details of any incident wherein Mr. Brooks allegedly yelled or screamed. Mr. Vardaman asserts that stress from the jobsite caused his blood pressure to rise. Mr. Vardaman's decision to leave the employment was not based on the advice of a licensed and practicing physician. Mr. Vardaman did not provide the employer with any medical documentation indicating that it was medically necessary for him to leave the employment. Mr. Vardaman did not request any changes in the work conditions prior to leaving the employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Workforce Development rule 817 IAC 24.26(6) provides as follows:

Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

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).

Iowa Admin. Code r. 871-24.25(21) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(21) The claimant left because of dissatisfaction with the work environment.

Iowa Admin. Code r. 871-24.25(22) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(22) The claimant left because of a personality conflict with the supervisor.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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.

Mr. Vardaman presented insufficient evidence to establish a voluntary quit for good cause attributable to the employer. Mr. Vardaman cites a medical basis for the quit, but provided no medical documentation to the employer or to Iowa Workforce Development to substantiate his assertion that it was medically necessary for him to leave the employment. Mr. Vardaman asserts intolerable and detrimental working conditions based on Mr. Brooks' purported yelling. However, Mr. Vardaman was unable to provide dates or details of a final incident that prompted him to leave or dates or details of any alleged incident. The weight of the evidence establishes a voluntary quit without good cause attributable to the employer based on dissatisfaction with the work environment and a personality conflict with a supervisor.

Because the evidence established a voluntarily quit without good cause attributable to the employer, Mr. Vardaman is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Vardaman must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The October 19, 2016, reference 02, decision is affirmed. The claimant voluntarily quit the employment on September 26, 2016 without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs