

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DUSTIN J KOOKER**  
Claimant

**APPEAL NO. 12A-UI-05252-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AG FORCE INC**  
Employer

**OC: 04/08/12**  
**Claimant: Respondent (1)**

Section 96.5-1 - Voluntary Quit

**STATEMENT OF THE CASE:**

AG Force (employer) appealed a representative's May 2, 2012 decision (reference 01) that concluded Dustin Kooker (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 29, 2012. The claimant participated personally. The employer participated by Jay Barquist, President. The employer offered and Exhibits One, Two, and Three, were received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**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 hired on March 19, 2011, as a full-time installer. The employer did not have a handbook during the claimant's employment. Employees regularly used the word "nigger" during the work day. A co-worker picked up the claimant and threw him frequently. The claimant complained about horseplay and the use of offensive language but behavior did not stop. Even the president used the word "nigger" in the workplace.

On December 28, 2011, the claimant called a coworker "fat". The coworker came at the claimant from behind causing the lit cigarette in the claimant's hand to burn his cornea and eyelashes. The claimant did not return to work after December 30, 2011, because he thought his workplace was intolerable.

**REASONING AND CONCLUSIONS OF LAW:**

For the following reasons the administrative law judge concludes the claimant voluntarily quit work 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.

The law presumes a claimant has left employment with good cause when he quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). It would be reasonable for the employee to inform the employer about the conditions the employee believes are intolerable or detrimental and to have the employee notify the employer that he intends to quit employment unless the conditions are corrected. This would allow the employer a chance to correct those conditions before a quit would occur. However, the Iowa Supreme Court has stated that a notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions. Hy-vee, Inc. v. Employment Appeal Board and Diyonda L. Avant, (No. 86/04-0762) (Iowa Sup. Ct. November 18, 2005). The claimant notified the employer of the intolerable working conditions. The employer saw the injury and knew about the conditions. The claimant subsequently quit due to those conditions. The claimant is eligible to receive unemployment insurance benefits.

**DECISION:**

The representative's May 2, 2012 decision (reference 01) is affirmed. The claimant voluntarily quit with good cause attributable to the employer. The claimant is eligible to receive unemployment insurance benefits.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs