

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DARYL R KATS**  
Claimant

**APPEAL NO. 17A-UI-09103-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HOPE HAVEN INC**  
Employer

**OC: 08/06/17**  
**Claimant: Appellant (1)**

Iowa Code Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Daryl Kats filed a timely appeal from the August 28, 2017, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Mr. Kats voluntarily quit on July 28, 2017 without good cause attributable to the employer and in response to being reprimanded. After due notice was issued, a hearing was held on October 2, 2017. Mr. Kats participated. John Wallenburg represented the employer and presented additional testimony through Loy Van't Hul. Exhibits 1 through 5 and A were received into evidence.

**ISSUE:**

Whether Mr. Kats separated from the employment for a reason that disqualifies him for unemployment insurance benefits or that relieves the employer's account of liability for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Daryl Kats was employed by Hope Haven, Inc., d/b/a Double HH Manufacturing, as a full-time machine operator until July 28, 2017, when he voluntarily quit in response to being reprimanded by John Wallenburg, Plant Manager. Mr. Kats' immediate supervisor was Gary De Bruin. Mr. De Bruin reports to Mr. Wallenburg. Mr. Kats had begun his employment in 2010. Until May 2016, Mr. Kats was in a lead position.

On July 28, 2017, Mr. Wallenburg found Mr. Kats to be away from his assigned machine. Mr. Kats was about to manufacture a tool at the request of his coworkers and has just lit the torch when Mr. Wallenburg entered the maintenance area. Mr. Wallenburg directed Mr. Kats to return to his machine. As Mr. Kats was walking away from Mr. Wallenburg, Mr. Kats stated, "You can kiss my ass." Mr. Wallenburg heard the utterance and followed Mr. Kats. Mr. Wallenburg asked Mr. Kats what he had said and Mr. Kats replied, "You heard me." Mr. Kats then turned around, moved into Mr. Wallenburg's personal space and started yelling at Mr. Wallenburg. Mr. Wallenburg had not used any profanity. Mr. Wallenburg directed Mr. Kats to go home and return in five days to discuss what had just happened. Mr. Kats collected his

tools and left. A short while later, Mr. Kats returned with his work clothes and threw them on Mr. Wallenburg's desk.

When Mr. Wallenburg arrived for work on July 29, 2017, Mr. De Bruin told Mr. Wallenburg about a text message he had received from Mr. Kats at 3:09 p.m. on July 28. Mr. Kats text message stated: "MY BIG BOY BOOTS ARE ON" John can KISS MY ASS!!! I am done with the Hell Hole!!!! It is nothing you did Gary. Sick of the a bus from John." Mr. Kats also sent a text message to a coworker, Tom Ver Molum. That text message stated, "I had enough of John bull shit and told him to kiss my ass. I guess John didn't like that. I no longer work for Double HH the HELL HOLE!!!!"

Mr. Kats did not return to work at the end of the 5-day suspension period.

### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.25(28) 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:

(28) The claimant left after being reprimanded.

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.

An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. *Henecke v. Iowa Department of Job Service*, 533 N.W.2d 573 (Iowa App. 1995). Use of foul language can alone be a sufficient ground for a misconduct disqualification for unemployment benefits. *Warrell v. Iowa Dept. of Job Service*, 356 N.W.2d 587 (Iowa Ct. App. 1984). An isolated incident of vulgarity can constitute misconduct and warrant

disqualification from unemployment benefits, if it serves to undermine a superior's authority. *Deever v. Hawkeye Window Cleaning, Inc.*, 447 N.W.2d 418 (Iowa Ct. App. 1989).

The evidence in the record establishes a voluntary quit in response to a reprimand. On July 28, 2017, Mr. Wallenburg reasonably expected Mr. Kats to remain in his assigned work area and to perform his assigned work. Mr. Wallenburg reasonably directed Mr. Kats back to his work area. Mr. Kats elected to direct profanity at Mr. Wallenburg. The utterance was a direct challenge to Mr. Wallenburg's authority. Mr. Kats then approached Mr. Wallenburg in a physically aggressive manner as Mr. Kats continued his belligerent outburst. Mr. Kats' words and conduct constituted misconduct in connection with the employment. Mr. Wallenburg reasonably disciplined Mr. Kats for the misconduct by sending him home on a five-day suspension and directing him to return after the five-day suspension to discuss the matter. Mr. Kats' voluntary quit followed shortly thereafter. Mr. Kats' voluntarily quit was without good cause attributable to the employer. Accordingly, Mr. Kats 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. Kats must meet all other eligibility requirements. The employer's account shall not be charged.

**DECISION:**

The August 28, 2017, reference 01, decision is affirmed. The claimant voluntarily quit the employment on July 28, 2017 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs