

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JENNIFER S WENGER**  
Claimant

**APPEAL NO. 13A-UI-11989-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KUM & GO LC**  
Employer

**OC: 09/22/13**  
**Claimant: Respondent (1-R)**

Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 17, 2013, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on November 18, 2013. Claimant Jennifer Wenger participated. Dave West represented the employer. The administrative law judge took official notice of the agency's record of benefits disbursed to the claimant and received Exhibits One and Two into evidence.

**ISSUE:**

Whether Ms. Wenger's voluntary quit was for good cause attributable to the employer. It was.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Jennifer Wenger was employed by Kum & Go, L.C., as a full-time store manager until September 18, 2013, when she voluntarily quit in response to verbal abuse directed at her by her immediate supervisor, Dave West, Quick Service Restaurant Operations Manager. The incident that triggered the quit occurred on September 16, 2013, during Mr. Wenger's visit to the employer's store in Riverside, the store that Ms. Wenger managed. During that visit, Mr. West asked Ms. Wenger and the assistant manager whether they heard a popping sound. Mr. West then told Ms. Wenger and the assistant manager that the popping sound was the sound of them pulling their heads out of their asses. Mr. West was in the habit of making liberal use of profanity when speaking to Ms. Wenger. Mr. West was also in the habit of providing contradictor directives to Ms. Wenger. On one day close to the end of the employment, Mr. West told Ms. Wenger that the conduct of other employees in the store was "fucking bullshit" and that Ms. Wenger should not "put up with that shit." Mr. West also told Ms. Wenger that it did not "fucking matter" if Ms. Wenger had to work from open to close, that she needed to get rid of all the store's employees. On another day close in time, Mr. West told Ms. Wenger that she was to do anything to retain the store's employees. Ms. Wenger suffers from multiple mental health issues and internalized Mr. West's offensive comments and contradictory directives. On another occasion, Mr. West told Ms. Wenger that she could not be missing work to address her health issues, which included migraine headaches.

## REASONING AND CONCLUSIONS OF LAW:

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.

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.

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).

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). Likewise, an employee has the right to expect decency and civility from the employer and an employer's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context can be sufficient to establish intolerable and detrimental working conditions.

The evidence in the record indicates that Mr. West created intolerable and detrimental working conditions by directing patently offensive and demeaning language to Ms. Wenger. Ms. Wenger was not obligated to submit to or tolerate such treatment. Ms. Wenger was not obligated to point out to Mr. West or anyone else with the employer that the patently offensive language was unacceptable to her. The weight of the evidence indicates that the use of patently offensive and demeaning language on September 16, 2013 was not an isolated incident, but was instead part of a pattern of conduct on the part of Mr. West.

Ms. Wenger voluntarily quit the employment for good cause attributable to the employer. Accordingly, Ms. Wenger is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

This matter will be remanded to the Claims Division for determination of whether Ms. Wenger has been able to work and available for work since she established her claim for benefits.

**DECISION:**

The agency representative's October 17, 2013, reference 01, decision is affirmed. The claimant quit the employment for good cause attributable to the employer. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

This matter is remanded to the Claims Division for determination of whether the claimant has been able to work and available for work since she established her claim for benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs