

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID L SMITH
Claimant

APPEAL NO. 09A-UI-00785-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**COMMUNITY SCHOOL DISTRICT
OF SOUTH TAMA COUNTY**
Employer

**OC: 11/09/08 R: 03
Claimant: Respondent (1)**

Iowa Code section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 15, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on February 4, 2009. Claimant David Smith participated. Joanne Hofer, Business Manager, represented the employer. Exhibit A was received into evidence.

ISSUE:

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

Whether the claimant voluntarily quit the employment to accept new employment and performed work in the new employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: David Smith was employed by the Community School District of South Tama County from March 24, 2008 until September 4, 2008, when he voluntarily quit the employment. At the time Mr. Smith quit, he had accepted new employment. Mr. Smith started to perform work in the new employment within a few days of leaving his employment with the school district.

The underlying basis for Mr. Smith's decision to leave his employment was his relationship with his immediate supervisor, Bill Eberhart, Head Custodian at the South Tama High School. Mr. Smith had received one day of training from a coworker at the beginning of the employment, but received no other training to assist him in properly performing his duties. A day after Mr. Smith commenced the employment, Mr. Eberhart reprimanded Mr. Smith for not performing his duties to Mr. Eberhart's expectations. Mr. Eberhart told Mr. Smith that if he could not do the job right, Mr. Eberhart would get rid of Mr. Smith and get someone who could do the job. Soon thereafter, Mr. Smith went to the High School Principal, Jim Tekippe, for the first of several times to express his concerns about how Mr. Eberhart was treating him. Principal Tekippe told Mr. Smith that Mr. Eberhart had personal problems, was participating in anger management classes, and that Mr. Smith should bear with Mr. Eberhart.

Mr. Eberhart continued with the same abrupt and snide approach to Mr. Smith throughout the employment. If Mr. Eberhart was unhappy with Mr. Smith's work performance, he would quick move to threatening to discharge Mr. Smith from the employment. When Mr. Eberhart uttered such remarks about Mr. Smith, he generally did so in front of other custodians.

The final incident that prompted the quit occurred the day Mr. Smith resigned from the employment. The night before, Mr. Smith had noted some tile in a restroom that needed repair. Mr. Smith had not been trained to repair the tile. Mr. Smith left a note for Mr. Eberhart on the morning of September 4, in which he noted that the tile needed to be repaired. When Mr. Smith appeared for work later that day, Mr. Eberhart confronted Mr. Smith about the note. Mr. Eberhart told Mr. Smith, "You don't write me notes; I write you notes." Mr. Eberhart repeated the threat of getting ride of Mr. Smith and replacing him with someone else. Mr. Smith concluded he had had enough and tendered his resignation to Principal Tekippe. Mr. Smith cited Mr. Eberhart, and Mr. Eberhart's anger issues, as the sole basis for his resignation.

The employer's witness started with the school district on July 1, 2008. The employer's witness had no contact with Mr. Smith during his employment and has no firsthand knowledge of the employment or the situation leading to Mr. Smith's quit. Mr. Eberhart and Principal Tekippe continue with the school district, but neither testified at the hearing. The employer had issued reprimands to Mr. Smith during the course of the employment for poor work performance. However, the most recent reprimand was issued on May 26, 2008, more than three months prior to Mr. Smith's quit.

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.

An employer has the right to expect decency and civility from its employees. 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. The question of whether the use of improper language in the workplace is misconduct is nearly always a fact question. It must be considered with other relevant factors, including the context in which it is said, and the general work environment. See Myers v Employment Appeal Board, 462 N.W.2d 734, 738 (Iowa Ct. App. 1990). Just as the employer has a right to expect civility and decency, Mr. Smith had the right to expect decency and civility from the employer.

When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that

party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976). The administrative law judge notes that the employer has failed to provide any testimony from persons with firsthand information about the claimant's employment or separation. The employer had the ability to present such evidence, but elected to proceed otherwise.

The weight of the evidence indicates that Mr. Smith's voluntary quit was prompted by a hostile work environment created and perpetuated by his immediate supervisor. The weight of the evidence indicates that the immediate supervisor routinely treated Mr. Smith with open disrespect by berating him and threatening to replace him. The weight of the evidence indicates that the supervisor had significant anger issues that had prompted his participation in anger management classes. The weight of the evidence indicates that Mr. Smith had repeatedly attempted to resolve his concerns by contacting the high school principal, but was offered no remedy. The weight of the evidence indicates that the last straw occurred when the supervisor went on a "power trip" after Mr. Smith attempted to convey necessary information regarding the need for a tile repair in a restroom. Regardless of the issues, actual and alleged, with Mr. Smith's work performance, the supervisor's conduct was inexcusable. The weight of the evidence establishes intolerable and detrimental working conditions that would have prompted a reasonable person to quit the employment.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Smith voluntarily quit the employment for good cause attributable to the employer. Accordingly, Mr. Smith is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Smith.

Even if the evidence had demonstrated a voluntary quit without good cause attributable to the employer, Mr. Smith would not have been disqualified for benefits because he had accepted new employment prior to the separation and performed work in the new employment. See Iowa Code section 96.5(1)(a).

DECISION:

The Agency representative's January 15, 2009, reference 01, decision is affirmed. The claimant quit the employment for good cause attributable to the employer. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw