

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY L TIPPE
Claimant

APPEAL NO. 08A-UI-04724-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JELD-WEN INC
Employer

OC: 05-08-08 R: 04
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 8, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 2, 2008. The claimant did participate along with his witness, Bart Burds, Group Manager. The employer did participate through Jay Borell, General Manager, and was represented by Edward O'Brien of TALX UC eXpress.

ISSUE:

Did the claimant voluntarily quit his job without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a garage door utility worker, full-time, beginning November 6, 2006, through April 14, 2008, when voluntarily quit.

On April 11 the claimant was working with Verle Henderson on a machine cutting doors. The machine became jammed and needed to be stopped in order for the claimant to clear the jam. The claimant asked Mr. Henderson to stop the machine and he did not do so. The claimant asked a second time for Mr. Henderson to shut down the machine so the jam could be cleared. Mr. Henderson shut down the machine. The claimant was working on clearing the jam when Mr. Burds, the supervisor, approached the area and asked why the machine was stopped. The claimant told Mr. Burds that he had asked Mr. Henderson to shut down the machine earlier so he could clear the jam but Mr. Henderson would not do so. Mr. Henderson began yelling and screaming at the claimant using profanity and calling him a liar. Mr. Henderson continued yelling and screaming at the claimant while using profanity for a good twenty seconds. Mr. Burds did nothing to stop Mr. Henderson's behavior. At hearing Mr. Burds was clear that coworkers are neither allowed to yell, scream, or use profanity when speaking to each other and that such conduct would violate the employer's no harassment policy. Mr. Burds did not deny that Mr. Henderson was using profanity while yelling and screaming at the claimant. Mr. Burds alleged that the claimant was yelling back at Mr. Henderson. After the machine was clear,

Mr. Burds walked away from the area and Mr. Henderson said to the claimant, "If you ever pull that shit again, I'm going to kick your ass."

Later that afternoon, Mr. Burds asked the claimant if he and Mr. Henderson had kissed and made up. The claimant told him that they had not and Mr. Burds laughed. The claimant went home and over the weekend determined that he did not feel safe returning to work with Mr. Henderson and that he did not feel he had to take such abusive treatment from Mr. Henderson, particularly in front of a supervisor who witnessed it but did nothing to stop the behavior or to discipline the offending employee to insure it did not happen again.

On April 14 the claimant called Mr. Borell and left him a message that he was quitting. Later the claimant amplified his reasons for quitting and told Mr. Borell that it was due to the way Mr. Henderson treated him and spoke to him on April 11 in front of Mr. Burds, who did nothing.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant quit 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 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." Myers v. EAB, 462 N.W.2d 734 (Iowa App. 1990).

Claimant was not required to give notice of his intention to quit due to an intolerable, detrimental or unsafe working environment. Hy-Vee, Inc. v. Employment Appeal Bd., No. 86/04-0762 (Iowa, Nov. 18, 2005).

Inasmuch as an employer can expect professional conduct and language from its employees, claimant is entitled to a working environment without abusive, obscene name-calling directed at him from either a supervisor or a coworker. An employee should not have to endure a public dressing down with abusive language directed at them, either specifically or generally as part of a group, in order to retain employment any more than an employer would tolerate it from an employee. The administrative law judge is persuaded that claimant's coworker Verle Henderson used profanity and was screaming at the claimant when the claimant had asked him to stop the blocked machine. This conduct was observed by Mr. Burds, the supervisor, who did not intervene to stop it or discipline Mr. Henderson. While the administrative law judge is also

persuaded that Mr. Henderson did threaten the claimant, the screaming and profanity alone witnessed and ignored by the supervisor act to create an intolerable work environment. The claimant voluntarily quit due to an intolerable work environment. The testimony of Mr. Burds was that both employees were yelling. The claimant denies yelling. It was the claimant's subpoena of Mr. Burds that led to Mr. Burds testimony at the hearing. The administrative law judge is persuaded that the claimant was not the instigator and the he did not yell at Mr. Henderson, notwithstanding Mr. Burds' testimony. A claimant would not subpoena a witness if they believed the witness was going to contradict their testimony. Mr. Burds admitted that yelling is not allowed and he did nothing about the behavior he witnessed. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The May 8, 2008, reference 01, decision is affirmed. Claimant quit the employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw