

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DARRYL K RILES**

Claimant

**WAGGONER SOLUTIONS CO**

Employer

**APPEAL NO: 13A-UI-11496-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/09/12**

**Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit

871 IAC 24.26(4) – Detrimental/Intolerable Working Conditions

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated October 3, 2013, reference 05, that held he voluntarily quit without good cause attributable to her employer on July 17, 2013, and benefits are denied. A telephone hearing was held on November 5, 2013. The claimant participated. Kevin Waggoner, President, Chuck Blanchard, William Rankin, Safety Coordinators, Sue Dinwiddie, HR Representative, Robert Smith, Production Manager, and William Rankin, participated for the employer. Employer Exhibit 1 was received as evidence.

**ISSUE:**

Whether the claimant voluntarily quit without good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on March 12, 2013, and last worked for the employer as a full-time driver/laborer on April 24, 2013. The claimant walked off the job due to a reported incident involving a co-worker. He believed he was sexually assaulted and/or harassed by a co-worker. He filed a criminal charge against the co-worker.

The employer disciplined the co-worker with a three-day suspension for horseplay. The claimant sought therapy for the incident and remained off work for a period of time. The department issued a May 23, 2013 decision reference 02 that claimant was not able to perform work due to illness as of April 28, and benefits are denied. Claimant did not appeal.

The department issued a decision dated August 2, 2013 reference 04 that claimant was able and available for work, and benefits are allowed. The employer appealed. An Administrative law judge (ALJ) issued a September 13 decision (13A-UI-09177-ET) claimant is able and available for work effective July 21, 2013, benefits are allowed. The ALJ remanded the employment separation issue.

On May 14 the employer offered claimant a job in Burlington, Iowa away from the co-worker and Keokuk location but he declined due to continuing therapy. The therapist sent the employer a May 20 letter about treatment.

The employer received Federal DOT notification claimant was selected for a random drug screen and it notified him. The employer was unaware claimant had been released by his therapist to return to work on July 21 without restriction. Claimant passed the drug screen. He made no attempt to return to employment.

Claimant consulted with a local prosecuting attorney there was insufficient evidence of sexual criminal assault as the touching occurred over clothes. The co-worker pled guilty to simple assault.

When the employer did learn claimant had a full release to return to work it sent claimant a notice on August 8 he had seven days to report. Claimant received the notice. Claimant did not respond because he did not want to return to employment where the co-worker was working.

#### **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.

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 administrative law judge concludes the claimant voluntarily quit without good cause attributable to his employer on July 21, 2013.

The claimant left employment for a good reason due to a co-worker assault that occurred on April 24, 2013. Although the employer doubts claimant's credibility about what happened, the worker pled guilty to simple assault.

Claimant was released to return to work without restriction on July 21. He made no attempt to return to employment because the worker who assaulted him was still working. He was given an opportunity for continuing employment with a notice to return but did not respond.

The issue is whether the assault incident is so egregious as to constitute a good cause for quitting. The employer tried to accommodate claimant with a different job at a different location in May but claimant declined because of continuing therapy. He did not tell the employer he was quitting then or later on and gave the employer no opportunity to offer a further work accommodation. The assault was a touching over a clothed area of the body that did not meet the definition of sexual assault.

Given the employer's tolerance of respecting claimant's therapy treatment and its accommodation offer for other work, the assault incident is an isolated matter where the employer was cut-off by claimant for refusing to contact it in order to return to work. Good cause for leaving attributable to the employer based on detrimental/intolerable work conditions is not established.

**DECISION:**

The department decision dated October 3, 2013, reference 05, is affirmed. The claimant voluntarily quit without good cause on July 21, 2013. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs