

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RAMON E JACIUNDE**  
Claimant

**APPEAL NO. 14A-UI-01089-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DEERY BROTHERS INC**  
Employer

**OC: 12/29/13  
Claimant: Respondent (1)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer filed an appeal from a representative's decision dated, January 21, 2014, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on March 11, 2014, by telephone conference call. The claimant participated personally. Employer participated by Terry Mertens, general manager. Jackie Nolan served as hearing representative. The record consists of the testimony of Ramon Jaciunde; the testimony of Terry Mertens; and Claimant's Exhibits A-C.

**ISSUE:**

Whether the claimant voluntarily left for good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a car dealership. The claimant was hired at the end of July, first part of August in 2012, to work as a full detailer. The claimant's last day of work was December 30, 2013. He resigned his position because he felt that his workplace was not safe.

The incident that led to the claimant's decision to resign his position was that he was physically attacked by another employee named Eric. Eric saw something on the claimant's Facebook page that he took offense to and jumped the claimant. The claimant fell into one of the vehicles. Eric used obscenities directed at the claimant. Eric was charged with assault and those charges are still pending. Eric was written up by the employer but not terminated because the employer thought he was a good employee. The claimant did not feel safe with Eric around and that Eric stared at him.

**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(2), (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:

(2) The claimant left due to unsafe working conditions.

(4) The claimant left due to intolerable or detrimental working conditions.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

The claimant is eligible for unemployment insurance benefits. The evidence established that the claimant was physically assaulted by another employee and that he no longer felt safe at work. The employer's response, that the other employee was "written up", does not guarantee that the claimant would not again be attacked over something as trivial as a face book posting. The employer obviously did not want to lose Eric as an employee and chose to keep him on the job. The employer can make that business choice. But in making such a choice, the employer left the claimant with no alternative but to resign in order to be certain Eric would not attack him again. The administrative law judge concludes that the claimant's workplace was hostile and detrimental and that he had good cause attributable to the employer for quitting his job. Benefits are allowed if the claimant meets all other eligibility requirements.

**DECISION:**

The decision of the representative dated, January 21, 2014, reference 01, is affirmed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs