

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN L REYNOLDS
Claimant

APPEAL NO. 13A-UI-08323-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UDELL TRUCKING INC
Employer

OC: 12/16/12
Claimant: Respondent (5)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 15, 2013, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 20, 2013. Claimant Brian Reynolds participated. Brett Udell represented the employer.

ISSUE:

Whether Mr. Reynolds separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Udell Trucking, Inc., is in the business of hauling rock and dirt. Brian Reynolds was employed by Udell Trucking, Inc., as a full-time side dump driver from 2011 and last performed work on June 20, 2013. Brett Udell, Owner and President, was Mr. Reynolds' supervisor. The employer also employed several other dump truck drivers. Mr. Reynolds' start time was 6:00 a.m., Monday through Friday. Mr. Reynolds would usually finish work sometime between 4:30 and 6:30 p.m., whenever the day's work was done.

On June 20, 2013, Mr. Reynolds did not work his whole shift. Mr. Reynolds had gone to Mr. Udell that morning to complain about ill treatment he was receiving from coworkers. Mr. Udell had directed Mr. Reynolds to go do his job. Mr. Udell learned at the end of the day that Mr. Reynolds had parked his truck and left work between 1:00 p.m. and 1:30 p.m. Another driver had left work at the same time. Mr. Udell learned about Mr. Reynolds' early departure when the client the company was hauling for that day asked not to have Mr. Reynolds and the other driver who left early return to the job site the next day. Mr. Reynolds had left work early on June 20, 2013, after three of his fellow drivers had used the employer's CB radio system to call Mr. Reynolds offensive names and to threaten him with violence. The other drivers called Mr. Reynolds an ass kisser, a cocksucker, a dick head, and similar names. One threatened to "kick his ass."

After Mr. Reynolds left work early on June 20, he went home. After Mr. Udell learned at about 6:00 p.m. that Mr. Reynolds had left work early, Mr. Udell tried to reach Mr. Reynolds by telephone. Mr. Reynolds did not answer the call and Mr. Udell did not leave a message. Mr. Udell then tried to learn from the other drivers what had occurred that day. The other drivers minimized the significance of the day's events and provided few details.

Mr. Reynolds did not report for work the next day. At 6:30 a.m., Mr. Reynolds was still in bed when Mr. Udell called again. Mr. Udell left a message asking Mr. Reynolds, "Are you going to be like a girl and run with your tail between your legs and not call me?" Mr. Reynolds called Mr. Udell back that same morning and discussed with Mr. Udell the incident that had prompted him to leave work early the previous day. Mr. Udell told Mr. Reynolds to take the weekend to relax and to call Mr. Udell on Sunday to discuss the plan for Monday.

On Sunday June 23, Mr. Reynolds telephoned Mr. Udell as directed. Mr. Udell told Mr. Reynolds that Mr. Reynolds' truck was going to the shop for repairs on Monday, June 24, and that Mr. Udell had no work for Mr. Reynolds at that time. The truck had previously been scheduled to go in to the shop on July 4, but Mr. Udell had moved up the scheduled repair.

On June 24, Mr. Reynolds got a telephone call from a fellow driver. The coworker told Mr. Reynolds that Mr. Udell had reassigned Mr. Reynolds' truck to the coworker.

On June 26, Mr. Reynolds appeared at the workplace at 6:00 a.m. to speak with Mr. Udell. When Mr. Udell saw Mr. Reynolds waiting, he asked, "What's going on?" Mr. Reynolds told Mr. Udell that he was not looking to cause problems, but that he had received a telephone call indicating that someone else was getting Mr. Reynolds' assigned truck. Mr. Udell told Mr. Reynolds it was best that they part ways. Mr. Reynolds said, "Okay, not a problem," and left.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). 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 weight of the evidence establishes that Mr. Reynolds voluntarily quit and that the employer subsequently decided not to allow him to return to work. The quit was indicated by Mr. Reynolds sudden early departure on June 20 without notifying Mr. Udell he was leaving. The quit is indicated by Mr. Reynolds failure to answer or return Mr. Udell's call shortly after 6:00 p.m. on June 20. The quit leaving is indicated by Mr. Reynolds not reporting for work the next day and "oversleeping" instead. Mr. Reynolds contacted Mr. Udell only after Mr. Udell provoked him to do so by taunting Mr. Reynolds with insults. The quit was not undone by Mr. Udell's suggestion that Mr. Reynolds take the weekend "to relax" and that they continue the discussion on Sunday. The weight of the evidence indicates that by Sunday, Mr. Udell had decided not to allow Mr. Reynolds to rescind the quit and return to the employment. What follows was a chain of events that only confirmed the employer's decision not to allow Mr. Reynolds to return to the employment.

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.

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). At the same time, an employee had the right to expect the same decency and civility.

The weight of the evidence establishes that Mr. Reynolds voluntarily quit in response to intolerable and detrimental working conditions. Mr. Reynolds was subjected by coworkers to patently offensive and demeaning language. Mr. Reynolds was threatened with violence. The employer tacitly approved or at least tolerated the uncivil conduct directed at Mr. Reynolds. The employer's disposition was revealed in Mr. Udell's message to Mr. Reynolds on June 21, wherein he called Mr. Reynolds a girl and accused him of running away with his tail between his legs. Mr. Reynolds' voluntary was for good cause attributable to the employer. Accordingly, Mr. Reynolds is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The agency representative's July 15, 2013, reference 01, decision is modified as follows. The claimant voluntarily 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

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