

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACOB WINTERS
Claimant

APPEAL NO: 17A-UI-02373-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SARAH GEORGE
Employer

OC: 02/05/17
Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 24, 2017, reference 01, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on March 27, 2017. The claimant participated in the hearing. Brian Ross, Operations Manager and Carrie Ungs, Office Manager/Human Resources, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left his employment for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time CNC machinist for Machine Tool Engineering from March 20, 2012 to November 10, 2016. He voluntarily quit his job because Operations Manager Brian Ross offended him.

On August 4, 2016, the claimant mopped the floor by his machine which was oily and made the floor oily. The machine was near the front door, restroom, break room and office and break time was scheduled in approximately five minutes. The floor was not dry so the claimant used an air gun to circulate the air in an effort to dry the floor and Operations Manager Brian Ross called the claimant a "retard," which deeply offended the claimant. The claimant did not believe Mr. Ross was joking, but Mr. Ross, who only vaguely recalls the situation and believes he said the claimant's actions were "retarded," stated everyone in the shop constantly joked around and the claimant "could dish it out as well as he could take it." The claimant was also upset because on another occasion (no date provided) Mr. Ross stated the "doctor's must have tightened (the claimant's) halo too tight." Mr. Ross recalls the claimant making the same reference.

The claimant could not get beyond Mr. Ross' remark and on October 24, 2016, he submitted his notice of resignation effective November 10, 2016. He told Mr. Ross he was leaving to find a part-time job so he could spend more time with his child.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.26(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.

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 from whom the employee has separated. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2.

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).

In this case, the claimant believed the employer called him a "retard" while the employer maintains he stated the claimant's actions were "retarded." Regardless of how the slur was used, it was inappropriate although the employer insists it was done in a joking manner, rather than in an attempt to hurt the claimant's feelings. Employees in the shop regularly joke around and make comments about one another and the claimant routinely engaged in that behavior as well. Additionally, the claimant waited nearly two months and three weeks before submitting his resignation notice and cited his reason for leaving at that time as wanting to find part-time work so he could spend more time with his child. While the employer should not have referred to the claimant as a "retard" or said his actions were "retarded" this incident does not rise to the level of unlawful, intolerable, or detrimental working conditions as is required before a claimant may quit with good cause attributable to the employer. Under these circumstances, the administrative law judge must conclude the claimant has not met his burden of proving his

leaving was for good cause attributable to the employer as that term is defined by Iowa law. Therefore, benefits must be denied.

DECISION:

The representative's decision dated February 24, 2017, reference 01, is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/rvs