

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHAWN M CUNNINGHAM**

Claimant

**APPEAL NO. 11A-UI-07648-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DICKERSON MECHANICAL  
DICKERSON MECHANICAL INC**  
Employer

**OC: 04/24/11  
Claimant: Respondent (1)**

Iowa Code Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 1, 2011, reference 04 decision that allowed benefits. After due notice was issued, a hearing was held on July 6, 2011. Claimant participated. Attorney Mark Otto represented the employer. The employer's witness did not make himself available for the hearing. Exhibit One was received into evidence.

**ISSUE:**

Whether the claimant's voluntary quit was for good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Shawn Cunningham was employed by Dickerson Mechanical 'as a full-time plumber's assistant from October 2010 until April 25, 2011, when he voluntarily quit in response to abusive behavior directed at him by Doug McKim, Master Plumber. Mr. McKim was Mr. Cunningham's immediate supervisor. Mr. McKim's abusive conduct included harassment outside of work as well as throwing things at Mr. Cunningham when Mr. McKim thought Mr. Cunningham was either not catching on or had made a mistake. Mr. Cunningham had gone to the owner, George Dickerson, several times with his complaints about Mr. McKim, but the conduct continued.

On April 25, 2011, the employer had Mr. Cunningham sign a voluntary quit form that the employer had prepared. The boilerplate language the employer put on the form indicated that Mr. Cunningham was voluntarily resigning without good cause attributable to the employer. Despite that language, Mr. Cunningham wrote on the form that he was resigning due to "employee conflict," in reference to Mr. McKim.

## 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.

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.

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).

The weight of the evidence in the record establishes that Mr. Cunningham voluntarily quit in response to harassing, abusive, and assaultive behavior perpetrated by his immediate supervisor, Mr. McKim. The evidence establishes that the conduct continued unabated despite the actions Mr. Cunningham took to bring the conduct to the attention of the employer. The situation created intolerable and detrimental working conditions that would have prompted a reasonable person to leave the employment.

Mr. Cunningham quit the employment for good cause attributable to the employer. Accordingly, Mr. Cunningham is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Cunningham.

## DECISION:

The Agency representative's June 1, 2011, reference 04, decision is affirmed. 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs