

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENNATH A STENBERG
Claimant

APPEAL NO. 14A-UI-07388-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMBRANDT ENTERPRISES INC
Employer

OC: 06/22/14
Claimant: Appellant (2)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Kennath Stenberg filed a timely appeal from the July 11, 2014, reference 01, decision that disqualified him for benefits. After due notice was issued, an in-person hearing was held in Mason City on October 28, 2014. Mr. Stenberg participated and presented additional testimony through Andrew Felten. Darla Thompson represented the employer and presented additional testimony through Shane Pomeroy. The hearing in this matter was consolidated with the hearing in Appeal Number 14A-UI-07387-JTT regarding claimant Andrew Felton and the same employer. Exhibits One through Eight and A through D were 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: The claimant was employed by Rembrandt Enterprises, Inc., as a full-time feed mill operator from 2009 until June 25, 2014, when he voluntarily quit due to unsafe working conditions. The claimant and a coworker had complained to the employer several times over the course of three years about defective dust mitigation in the mill where they worked. The employer made a financial decision to defer taking effective steps to address those concerns despite the fact that allowing excessive dust to accumulate in the mill violated OSHA regulations and presented an explosion hazard. Due to the employer's inaction, an excessive amount of grain dust coated almost every surface in the mill, including machines that were directly connected to an electrical power source.

REASONING AND CONCLUSIONS OF LAW:

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.

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 evidence in the record establishes a voluntary quit due to intolerable and detrimental working conditions created by the employer. The employer failed over the course of three years to take meaningful steps to address a known workplace hazard, the accumulation of excessive amounts of dust. The claimant voluntarily quit the employment for good cause attributable to the employer. Accordingly, the claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The July 11, 2014, reference 01, decision is reversed. The claimant 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

jet/pjs