

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**CHARLES E WEISENSTEIN**  
Claimant

**AGREQUIP INC**  
Employer

**APPEAL 15A-UI-11359-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/20/15  
Claimant: Respondent (1)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer filed an appeal from the October 7, 2015, (reference 01) unemployment insurance decision that allowed benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on October 27, 2015. The claimant participated personally. The employer participated through Jimmie Counts, Plant Manager.

**ISSUES:**

Did the claimant voluntarily quit the employment with good cause attributable to the employer?

Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a shipper and was separated from employment on September 2, 2015, when he resigned without notice.

On August 21, 2015, the claimant was scolded by a supervisor, Aaron Batton, for leaving blocks out and was told they had been out for a month. The claimant corrected Mr. Batton, as he had just cut the blocks the prior week. To which, Mr. Batton replied either, "do you have a fucking problem? Or "You have something to say to me motherfucker?" The claimant told Mr. Batton he was tired of pulling Mr. Batton's weight when he often missed work. This upset Mr. Batton who confronted the claimant physically and pushed the claimant in the chest. The claimant pushed back. Mr. Batton then tipped off the claimant's hat, to which the claimant did the same. Mr. Batton then punched the claimant in the chest, and the claimant responded. The claimant told Mr. Batton to "get the fuck off of me" and the fight ended with both having a "busted" lip. When the claimant left for lunch, he did not return to the employer. When he returned the

following week, he learned he was suspended and did not return to perform work again. Mr. Batton was allowed to retain his position as a supervisor.

The administrative record reflects that claimant has not yet received unemployment benefits since filing a claim with an effective date of September 20, 2015. The administrative record also establishes that the employer did participate in the fact-finding interview.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment with 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(2) and (4) provide:

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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). Good cause need not be based upon full or wrongdoing on the part of the employer, but may be attributable to the employment itself. *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787 (Iowa 1956).

A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to rule 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

Inasmuch as an employer can expect professional conduct and language from its employees, the claimant is entitled to a working environment without being the target of abusive language and physical violence. The claimant's correction of when the blocks were placed, did not

warrant Mr. Batton saying, "Do you have a fucking problem?" Or "You have something to say to me motherfucker," to his subordinate, let alone initiating an act of physical violence by pushing and later punching the claimant.

Mr. Batton was in a supervisory role, and as such, is expected to be a model of the employer's values and uphold its policies, not initiate verbal and physical altercation. An employee should not have to endure bullying or a public dressing down with abusive language directed at them, either specifically or generally as part of a group, in order to retain employment any more than an employer would tolerate it from an employee. The employer, by way of Mr. Batton, created an unsafe and intolerable work environment for the claimant that gave rise to a good cause reason for leaving the employment. Benefits are allowed.

Because the claimant is eligible for benefits, he has not been overpaid benefits. As a result, the issues of recovery of any overpayment and possible relief from charges are moot.

**DECISION:**

The October 7, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible and the benefits withheld shall be paid. The claimant has not been overpaid benefits. The employer's account shall be charged.

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Jennifer L. Coe  
Administrative Law Judge

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Decision Dated and Mailed

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