

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD A JOHNSON
Claimant

APPEAL NO. 07A-UI-00497-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

G & G SALES COMPANY
Employer

OC: 12/24/06 R: 02
Claimant: Appellant (2)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Richard Johnson filed a timely appeal from the January 12, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on January 24, 2007. Mr. Johnson participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate.

ISSUE:

Whether the claimant voluntarily quit for good cause attributable to the employer.

Whether the working conditions were intolerable and/or detrimental and would have prompted a reasonable person to quit the employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Richard Johnson was employed by G & G Sales Company as a full-time Service Technician from July 1987 until December 18, 2006, when he voluntarily quit. Mr. Johnson's immediate supervisor was Shop Foreman Jerry Angle. On December 18, Mr. Johnson told Mr. Angle that he was quitting because he could no longer tolerate the working conditions. Mr. Johnson turned in his keys and left.

Several factors contributed to Mr. Johnson's decision to quit the employment. On the day Mr. Johnson quit, a coworker taunted Mr. Johnson regarding his failure, a few weeks earlier, to appropriately fasten a tire to a car. This same employee was in the habit of initiating or escalating horseplay at Mr. Johnson's expense. Mr. Johnson at times participated in some of the horseplay. Mr. Johnson did not appreciate the coworker's failure to recognize reasonable and/or appropriate limits to the horseplay. Mr. Johnson had to walk by the coworker's work area to obtain oil or tools. On December 16, the coworker had thrown water on Mr. Johnson. The water throwing was a regular occurrence. A week before Mr. Johnson quit, the same coworker had thrown snowballs at Mr. Johnson. Mr. Johnson had not been engaging in any horseplay at the time.

Mr. Johnson's relationship with owner Jim Gruetzmacher also contributed to the decision to quit. Mr. Gruetzmacher was in the habit of making demeaning comments about Mr. Johnson and would frequently call Mr. Johnson dumb or stupid. If an unkempt or poorly dressed customer entered the business, Mr. Gruetzmacher would comment that the person must be one of Mr. Johnson's relatives. On the day Mr. Johnson quit, Mr. Gruetzmacher told Mr. Johnson that he was dumb to have provided a customer with a low quote on used tires, despite the fact that Mr. Johnson had followed Mr. Gruetzmacher's previous instructions in making the quote. Three weeks before the quit, Mr. Gruetzmacher told Mr. Johnson he was stupid for providing customer with a \$49.95 quote for a front end alignment, even though that was the price advertised on the front of the business. When Mr. Johnson indicated that he had simply quoted the price advertised and that it would be up to the mechanic to discuss any additional charges with the customer, Mr. Gruetzmacher told Mr. Johnson to stop "messing with" him and to "fuck off."

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Johnson's voluntary quit was for good cause attributable to the employer. It does.

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).

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). Likewise, Mr. Johnson had the right to expect decency and civility from the employer and from his coworkers.

The fact that Mr. Johnson stayed in the employment an extended period despite the offensive conduct perpetrated by the employer or his coworker did not make that conduct any less detrimental or intolerable to Mr. Johnson. A reasonable person would not suffer an employer who repeatedly refers to them as dumb or stupid, tells them to "fuck off," or otherwise insults their dignity. Such conduct would indeed be detrimental to a person's mental health the longer

they stayed in such an environment. The administrative law judge concludes that the working conditions were in fact intolerable and/or detrimental and would have prompted a reasonable person to quit the employment. Accordingly, the administrative law judge concludes that Mr. Johnson quit the employment for good cause attributable to the employer. Accordingly, Mr. Johnson is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Johnson.

DECISION:

The Agency representative's January 12, 2007, 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/kjw