IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

LANE M WILHARM
Claimant

ABBY LEAS LLC
Employer

APPEAL NO. 17A-UI-03234-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/12/17
Claimant: Appellant (2)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Lane Wilharm filed a timely appeal from the March 13, 2017, reference 02, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on an agency conclusion that Mr. Wilharm voluntarily quit on July 1, 2016 without good cause attributable to the employer. After due notice was issued, a hearing was held on April 17, 2017. Mr. Wilharm participated and presented additional testimony through Lisa Ciavarelli. Lacey Wilken represented the employer.

ISSUE:

Whether Mr. Wilharm'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: Lane Wilharm was employed by Abby Leas, L.L.C., as a part-time can counter from April 2016 until July 1, 2016, when he voluntarily quit. The employer's business was a liquor store and can redemption center. The business is no longer operating. Tabatha Wilken and Lacey Wilken were the business owners. Stacy Lentz, Manager, was Mr. Wilharm's immediate supervisor. At the time of hire, the Wilkens asked Mr. Wilharm whether he would be available to report for work on short notice when needed and Mr. Wilharm indicated a willingness to do so. On multiple occasions during the employment, Mr. Wilharm reported for work on short notice. Mr. Wilharm resided with his mother, Lisa Ciavarelli, a block away from the business. Mr. Wilharm is 19 years old.

Before Mr. Wilharm left work on June 30, 2016, Ms. Lentz asked him whether he would be willing to work the next day. Mr. Wilharm had not been on the schedule to work the next day. Before he left the workplace on June 30, Mr. Wilharm agreed to work the next day. Both parties understood that meant Mr. Wilharm would appear for work at 10:00 a.m.

On July 1, 2016, Ms. Lentz did not appear for work as agreed. When Mr. Wilharm did not appear, Ms. Lentz attempted to reach Mr. Wilharm at his cell phone number. Mr. Wilharm was still sleeping at the time of the call and missed the call. Ms. Lentz then sent text messages to

Ms. Lisa Ciavarelli's cell phone. Mr. Wilharm awoke at 10:51 a.m. At that time, Ms. Ciavarelli told Mr. Wilharm of the text messages that employer had sent to her phone. Mr. Wilharm checked his phone and saw that he had missed a call from the employer. Mr. Wilharm immediately called the workplace and spoke with Lacey Wilken. Ms. Lentz was also at Ms. Wilken's end of the line. Mr. Wilharm had his phone on speaker with his mother in the background. The employer told Mr. Wilharm that he needed to report for work immediately. Mr. Wilharm told the employer that he and his father had other plans and that he could not work that day. The employer then asserted that Mr. Wilharm was an on-call employee and needed to report for work immediately. At that point, Ms. Ciavarelli inserted herself into the call. Ms. Ciavarelli told Ms. Wilken that if Mr. Wilharm was expected to be on-call for the employer, then the employer must pay him for the time when he was standing by waiting for the possibility for being called in. Ms. Ciavarelli was speaking from her experience as an emergency medical technician (EMT) and firefighter. Ms. Wilken objected to Ms. Ciavarelli inserting herself into the call. Ms. Wilken asserted that Mr. Wilharm was an adult and asked Ms. Ciavarelli why she was talking instead of having Mr. Wilharm speak for himself. Ms. Ciavarelli stated that the employer did not want her involved in her son's employment affairs then the employer should not send text messages to her phone. At that point, the exchange became heated. Ms. Wilken yelled, "Why the fuck are you doing this right now? You're not him! Let him do his own talking." As the heated exchange between his mother and employer was playing out, Mr. Wilharm said, "Fuck this. I'm done." Mr. Wilharm then hung up. Immediately thereafter, Mr. Wilharm sent Ms. Lentz a text message advising that he was quitting the employment.

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 213 (Iowa 2005).

The weight of the evidence in the record establishes an out-of-control situation on July 1, 2016 to which all parties contributed. Mr. Wilharm failed to follow through on his agreement to work the July 1 shift. The employer elected, on July 1 and on earlier occasions, to involve Ms. Ciavarelli in Mr. Wilharm's employment issues without factoring the potential negative consequences of doing so. Mr. Wilharm elected to have his mother on the line when he returned the employer's call. The employer elected to take a heavy-handed, unreasonable

approach when dealing with Mr. Wilharm on the phone. That conduct provoked Ms. Ciavarelli to stand up for her son, as any reasonable person would expect her to do under the circumstances. Ms. Wilken elected to further escalate the disagreement by using patently offensive language directed at Ms. Ciavarelli. The spiraling mess of the verbal exchange ended with Mr. Wilharm announcing his quit, adding tit-for-tat profanity, and terminating the call. There were many opportunities during the interaction for any or all of the participants to choose to act in a reasonable manner. During the hearing, the administrative law judge found Ms. Wilken's testimony regarding the July 1 telephone call to be less candid and credible that the testimony provided by the other witnesses.

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). Use of foul language can alone be a sufficient ground for a misconduct disqualification for unemployment benefits. *Warrell v. Iowa Dept. of Job Service*, 356 N.W.2d 587 (Iowa Ct. App. 1984). An isolated incident of vulgarity can constitute misconduct and warrant disqualification from unemployment benefits, if it serves to undermine a superior's authority. *Deever v. Hawkeye Window Cleaning, Inc.* 447 N.W.2d 418 (Iowa Ct. App. 1989). Likewise, employees have the right to expect decency and civility from their employer.

The weight of the evidence in the record establishes good cause for Mr. Wilharm's voluntary quit based on the employer's yelling and use of profanity during the contact on July 1, 2017. Mr. Wilharm is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The March 13, 2017, reference 02, decision is reversed. The claimant quit the employment on July 1, 2016 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/rvs