

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIO GOSS
Claimant

APPEAL NO. 13A-UI-07378-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 05/05/13
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated June 11, 2013, reference 02, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on August 22, 2013. Claimant participated. Employer participated by Sharon Robertson, Human Resource Generalist; Megan Thornburg, Team Manager; Kathy Pullis, Senior Team Manager and Debbie Nelson, Human Resource Manager. Exhibit One was admitted into evidence.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on May 6, 2013. Claimant quit work due to displays of racism in the workplace. A team manager told a racist joke during training. Claimant waited some five months before reporting the incident. The joke was, "what do you call four black people driving off a cliff, my friends." Claimant found such offensive and racist. Employer immediately investigated the incident after the report. Employer took prompt remedial action. Claimant also experienced employees using the word nigger in the workplace. Claimant found such offensive and racist. Claimant did not initially report these incidents because he was a new employee and afraid. Employer's policies prohibit harassment in the workplace.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has established that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because of harassment in the workplace. These types of incidents are of such a serious nature that claimant need not give employer a chance to take remedial action before quitting. The joke was told by a manager. Employer has a heightened responsibility for actions of managers. The delay is somewhat perplexing but excusable. Claimant gave employer a chance to prove itself by remaining employed for months. The ongoing incidents with the word

nigger lends credibility to the claimant's statements that the harassment work rules are not uniformly enforced. Notwithstanding the delay in reporting the racist actions of the co worker and supervisor, this is good cause attributable to employer for a quit. Benefits allowed.

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.

871 IAC 24.26(3) provides:

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:

(3) The claimant left due to unlawful working conditions.

871 IAC 24.26(4) provides:

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:

(4) The claimant left due to intolerable or detrimental working conditions.

DECISION:

The decision of the representative dated June 11, 2013, reference 02, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs