

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MICHELLE L COOK
Claimant

STEPHEN M SIMONS
Employer

APPEAL 14A-UI-12519-GT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/02/14
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated November 26, 2014, (reference 01) that held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on December 30, 2014. Claimant participated. Employer participated by Stephen Simons, Owner. Employer's 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 November 3, 2014. Claimant resigned from work on that date because her foreman and co-workers were smoking marijuana at work.

Claimant had told the employer on previous occasions that the roofers she was working with were smoking marijuana on the job, and that she was not comfortable being around their illegal and harmful conduct. Employer did not have first-hand knowledge of the illegal drug use, and did not take any actions to stop the practice on the job sites. On November 3, 2014 claimant's foreman and co-worker were smoking marijuana again, and were acting irrationally. Claimant decided to quit her employment on that date to avoid the harmful effects of drugs being used in her presence.

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 her foreman and co-workers smoked marijuana at work in her presence on multiple occasions.

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.

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).

Individuals who leave their employment due to disparate treatment are considered to have left work due to intolerable or detrimental working conditions and their leaving is deemed to be for good cause attributable to the employer. The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Dep't of Job Serv.*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Emp't Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993). It is reasonable for an employee to quit employment to avoid being exposed to second hand marijuana smoke, and to avoid criminal prosecution for being in constructive possession of marijuana at the job site.

DECISION:

The decision of the representative dated November 26, 2014, (reference 01) is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/pjs