

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM H MESSENGER
Claimant

APPEAL NO. 10A-UI-08441-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MUNLAKE CONTRACTORS
Employer

OC: 05/22/10
Claimant: Appellant (2)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

William Messenger filed a timely appeal from the June 7, 2010, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on July 29, 2009. Mr. Messenger participated. Gary Guzzo, Vice President Hospitality Division, represented the employer.

ISSUE:

Whether the claimant's voluntary quit was for good caused attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: William Messenger was employed as a full-time carpenter for Munlake Contractors from April 4, 2010 until May 3, 2010, when he voluntarily quit. The employment was temporary in nature and was expected to last eight to ten weeks. Mr. Messenger quit in response to verbal abuse perpetrated by a jobsite supervisor, Chris Maxey, and the person who replaced Mr. Maxey during the last week of Mr. Messenger's employment. These supervisors were in the habit of referring to Mr. Messenger and other workers as sons-of-bitches and dumb motherfuckers. Mr. Messenger notified the employer of his intention to leave the employment by speaking directly to Dan Workman, Jobsite Superintendent. Mr. Maxey and Mr. Workman are still with the employer. A week or two after Mr. Messenger quit, he contacted the employer about returning the employment. The project was nearing its end. For that reason, and because Mr. Messenger had quit suddenly, the employer was not willing to return Mr. Messenger to the employment.

REASONING AND CONCLUSIONS OF LAW:

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).

When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The employer did not present any testimony from Mr. Maxey, Mr. Workman or others with personal knowledge concerning Mr. Messenger's working relationship with Mr. Maxey. The employer had the ability to present such testimony. Mr. Messenger was the only witness who testified from personal knowledge about his working relationship with Mr. Maxey and Mr. Maxey's replacement at the end of the employment. The administrative law judge concludes that Mr. Messenger's testimony about the verbal abuse perpetrated by Mr. Maxey and Mr. Maxey's replacement was credible. Such conduct on the part of a supervisor would establish intolerable and detrimental working conditions that would prompt a reasonable person to quit the employment. The fact that Mr. Messenger was later willing to return to the temporary employment for a few more weeks, in the context of the present economy, does not establish that the working conditions were other than intolerable or detrimental.

Mr. Messenger voluntarily quit the employment for good cause attributable to the employer. Accordingly, Mr. Messenger is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Messenger.

DECISION:

The Agency representative's June 7, 2010, reference 02, decision is reversed. The claimant voluntarily 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

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