

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN E BICKFORD
Claimant

APPEAL NO. 13A-UI-12256-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**DROSTE ENTERPRISES INC
NOVUS OF NORTHEAST IOWA**
Employer

OC: 09/22/13
Claimant: Appellant (2)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Kevin Bickford filed a timely appeal from the October 22, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on November 21, 2013. Mr. Bickford participated. Brad Droste represented the employer and presented additional testimony through Pam Droste.

ISSUE:

Whether Mr. Bickford's voluntary quit was attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Kevin Bickford was employed by Droste Enterprises, Inc., as a full-time auto body shop manager from 2010 until September 11, 2013, when he voluntarily quit. Mr. Bickford's immediate supervisor was Brad Droste, General Manager and minority shareholder. Pam Droste is majority shareholder and is Mr. Droste's step-mother. Mr. Droste's brother, Stewart Droste, also works for the business in retail sales of truck accessories.

The incident that triggered Mr. Bickford's voluntary quit occurred on September 11, 2013, during an argument in the workplace between Droste family members. The argument arose when Brad Droste attempted to discipline Stewart Droste. Pam Droste did not support Brad Droste's attempt to discipline his brother in connection with the employment. The argument ensued and Brad Droste stormed out. Pam Droste and Stewart Droste continued the argument after Brad Droste left and moved the argument from the office to the shop area where Mr. Bickford was working. During the loud argument between Pam and Stewart Droste, Pam Droste said that Stewart Droste and Mr. Bickford had been violating the policy manual. Ironically, the policy manual contained a rule requiring employees to treat others in the workplace with courtesy, dignity and respect. The policy also prohibited verbal abuse or demeaning comments. When Mr. Bickford heard his name mentioned, he responded, "Don't get me in on this." Mr. Bickford did not swear or yell in connection with this utterance. Ms. Droste yelled back, "This discussion does not pertain to you and if you don't like it, you can get the fuck out!" Mr. Bickford told

Ms. Droste that she could not swear at him. Ms. Droste replied, "I'll talk to you anyway I want in my fucking business." Mr. Bickford responded, "Fuck yourself." Then Mr. Bickford left the workplace. Later that same day, Mr. Bickford sent a text message to Ms. Droste: "Boy did you fuck up."

Mr. Bickford did not respond to the employer's attempts to contact him about coming back to work. The employer had Mr. Bickford's employer-issued cell phone disconnected. Mr. Bickford returned on Friday, September 13, 2013 solely for the purpose of collecting his weekly paycheck. While he was at the workplace, Mr. Bickford made a double-edged apology to Ms. Droste by apologizing for yelling at her while referencing that she had yelled at him first.

Mr. Bickford was in the habit of using profanity in the workplace. A couple years before he quit, the employer reprimanded Mr. Bickford for directing profanity at Ms. Droste.

Mr. Bickford had other complaints about the employment. These included a belief that the employer expected him to work when he was injured and excused from work by a doctor. The employer saw that situation, and similar situations, differently and believed that Mr. Bickford elected to appear for work to make up lost work hours and lost pay.

In the days leading up to the appeal hearing, Mr. Bickford left a telephone message for Brad Droste over money matters and closed by calling Mr. Droste a motherfucker.

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).

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, an employee has the right to expect decency and civility from the employer.

There are clearly two sides to this story. The employer asserts, in essence, that profanity was par for the course in the workplace, part of a workplace culture in which Mr. Bickford was a full participant. The employer argues that Mr. Bickford had no basis for reacting to the employer's profane utterances by quitting because he regularly employed the same sort of language that he asserts was offensive or upsetting to him when the employer was directing the language at him. The employer's position is supported by Mr. Bickford's use of profanity at the time of the separation, two hours after the separation in the text message to the employer, and the very recent telephone message.

The other side of the story is about Mr. Bickford's legitimate complaints about being dragged into heated family arguments in the workplace and being subjected to verbal abuse perpetrated by the employer. It was the employer's responsibility to set the tone of the workplace, to expect civility and to model civility. The inappropriateness of Ms. Droste's utterances is highlighted by her blatant violation of the company's written policies concerning language and conduct in the workplace. The employer's September 11, 2013 utterances went beyond mere use of profanity. First, as part of a purported disciplinary matter involving another employee, the employer moved a heated argument with that employee into Mr. Bickford's general work area. Then the employer specifically referenced Mr. Bickford by name, drawing him into the argument. The employer then directed a profane, *offensive*, and *demeaning* comments toward Mr. Bickford. The employer then asserted to Mr. Bickford that the employer, as the business owner, had a right to verbally abuse Mr. Bickford with impunity. The employer told Mr. Bickford that his only choice was to submit or leave. Mr. Bickford, though unreasonable and less than a sympathetic character in some respects, did what a reasonable person would do under the circumstances. He left. The employer had created intolerable and detrimental working conditions.

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

DECISION:

The Agency representatives October 22, 2013, 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/pjs