

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AARON CARSON**  
Claimant

**APPEAL NO: 09A-UI-02452-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LECLAIRE MANUFACTURING CO**  
Employer

**OC: 12-28-08**  
**Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 13, 2009, reference 02, decision that allowed benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on May 11, 2009. The claimant participated in the hearing. Bruce Moore, Administrative Vice-President; Jim Cole, Permanent Mold Supervisor; and Ward Scott, X-Ray Supervisor/Quality, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the claimant voluntarily left his employment with good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time laborer/grinder for Leclair Manufacturing from February 8, 2007 to January 22, 2009. He walked off the job because he felt he was being harassed and it was a hostile work environment because his supervisor, Jim Cole, made comments to him about his age. Mr. Cole would walk by the claimant and ask how he was doing and the claimant would often reply he was "getting too old for this crap" and because of that Mr. Cole occasionally called him "grandpa" or "old man." The claimant did not tell Mr. Cole his comments offended him. One time Mr. Cole asked the claimant if he "got a piece of ass" that morning and the claimant was offended by that as well but did not tell Mr. Cole the statement upset him. The employer has a process for handling harassment cases whereby an employee goes to human resources if he is having a conflict with his supervisor and if he does not receive any relief from that source he can file a grievance. The claimant did not do any of those things and the employer was unaware of his concerns or that he was considering quitting because of those issues.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

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 means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. "Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (Florida App. 1973). The claimant is 48 years old and Mr. Cole is close to the same age. While the median age of employees in the plant may be younger the claimant's inability to handle a joke about his age after he said first that he was "getting too old for this crap" does not rise to the level of harassment as defined by Iowa law. Mr. Cole admitted he made a comment about the claimant "getting a piece of ass" on one occasion but the claimant did not tell Mr. Cole that any of his statements offended him and he has not demonstrated how Mr. Cole would know otherwise. The claimant did not follow the employer's procedure for dealing with harassment by going to human resources or filing a grievance but simply expected the employer to know he felt harassed and act on that information. Because the claimant did not tell the employer or Mr. Cole how he felt about the comments, the administrative law judge cannot conclude the claimant has met his burden of proving unlawful, detrimental or intolerable working conditions. Therefore, benefits must be denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

## DECISION:

The February 13, 2009, reference 02, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter of determining the amount of the

overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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