

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN J LOCEY

Claimant

APPEAL NO. 16A-UI-10487-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BLUE MONDE LLC

PROMOTION FULFILLMENT CENTER

Employer

OC: 09/04/16

Claimant: Appellant (2)

Iowa Code section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Kevin Locey filed a timely appeal from the September 21, 2016, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on an agency conclusion that Mr. Locey voluntarily quit on September 7, 2016 without good cause attributable to the employer. After due notice was issued, a hearing was held on October 10, 2016. Mr. Locey participated and presented additional testimony through Cindy Meade. Joe Straka represented the employer and presented additional testimony through Brenda Merritt and Dana Goodwin. The administrative law judge took official notice of the materials submitted for and generated in connection with the fact-finding interview and marked one page of the fact-finding materials as Department Exhibit D-1.

ISSUE:

Whether Mr. Locey's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Kevin Locey was employed Blue Monde, L.L.C., d/b/a Promotion Fulfillment Center (PFC), as a full-time warehouse worker from October 2015 until September 7, 2016, when he voluntarily quit. Prior to September 7, 2016, Mr. Locey learned that some temporary workers were being paid \$15.00 per hour. Mr. Locey's hourly wage at the time of hire was \$10.50. In February 2016, Mr. Locey's hourly wage increased to \$12.00. Mr. Locey was upset by the thought that the temporary workers were making more than Mr. Locey and other permanent employees. The employer was experiencing high turnover and elected to pay the higher wage to the temporary employees as a necessary stopgap measure. On the morning of September 7, Mr. Locey spoke to his immediate supervisor, Brenda Merritt, Warehouse Manager, regarding the wage disparity. Ms. Merritt told Mr. Locey that the higher wage was an emergency measure. Mr. Locey was upset at the time he spoke to Ms. Merritt. Ms. Merritt perceived Mr. Locey tone and demeanor as hostile. Ms. Merritt invited Mr. Locey to speak with Joe Straka, the new Director of Operations.

Soon thereafter, Mr. Straka summoned Mr. Locey to a meeting. Mr. Straka opened the meeting by stating that he understood Mr. Locey wanted to talk about the temp employees making \$15.00 per hour. Mr. Locey told Mr. Straka that Ms. Merritt had already stated that the higher wage was temporary. Mr. Locey told Mr. Straka that he should tell the temporary workers that the \$15.00 wage was just temporary. At that point, Mr. Straka asked Mr. Locey who had told him that the temporary workers were making \$15.00 per hour. Mr. Locey did not provide an answer. Mr. Straka stated, "Watch this." Mr. Straka then had Mr. Locey follow him to the break room. Once there, Mr. Straka addressed two temporary workers and asked them who had told Mr. Locey that they were making \$15.00 per hour. Both temp workers denied providing that information to Mr. Locey. Mr. Straka then asked Mr. Locey why he had verbally attacked Ms. Merritt that morning. Mr. Locey said, "Excuse me?" In other words, Mr. Locey did not believe he had verbally attacked Ms. Merritt. Mr. Straka told Mr. Locey, "Let's go talk to Brenda."

Mr. Straka then led Mr. Locey to Ms. Merritt's office. Once inside the office, Mr. Straka closed the door. Ms. Merritt stated that Mr. Locey had used an angry tone and that his voice had been loud. Mr. Straka stated, "Now tell me who told you." Mr. Locey avoided providing a direct answer. Mr. Locey stated that he had been looking at Facebook at the time wages were being discussed, had just been listening and was uncertain who had spoken regarding the wage. Mr. Locey added that he was hard of hearing. At that point, Mr. Straka began to laugh at Mr. Locey. Mr. Locey told Mr. Straka not to laugh at him and that he needed to remain professional. Mr. Straka asked Mr. Locey whether he had a doctors' note to support his assertion that he was hard of hearing. Mr. Straka then stated, "Let me tell you something Mr. Locey...I have worked in 20 warehouses and have never seen anything like this." Mr. Straka was visibly angry. Mr. Straka stepped toward Mr. Locey. Mr. Straka is 6 feet 2 inches and weighs 245 pounds. Mr. Locey is 5 feet 10 inches tall and weighs 155 pounds. When Mr. Straka stepped toward Mr. Locey, Mr. Locey became fearful. Mr. Locey put his hands up and told Mr. Straka, "Don't come at me like that." Ms. Merritt told Mr. Locey that Mr. Straka was not coming toward Mr. Locey and that he did not need to put his hands up in fear. About that time, another employee knocked on the door. After the employer addressed the interruption, Mr. Locey stated he had had enough and was resigning. Mr. Locey provided his ID badge to Ms. Merritt. Ms. Merritt then escorted Mr. Locey out. As Mr. Locey exited the room and the workplace, Ms. Merritt observed that Mr. Locey had tears in his eyes.

Another employee, Cynthia Mead, had been working in an office adjoining Ms. Merritt's office had heard portions of the conversation, including Mr. Straka's laughter, Mr. Locey's assertion that Mr. Straka needed to remain professional, and Mr. Locey's statement, "Don't come at me like that." Ms. Mead voluntarily terminated her employment about a week after Mr. Locey quit.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Admin. Code r. 871-24.25(13) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

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).

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.

The administrative law judge is confronted with two substantially differing versions of the meeting that took place in Ms. Merritt's office with Mr. Straka, Mr. Locey and Ms. Merritt present and Ms. Meade in the adjoining work space. The meeting in that office followed other events that occurred that same morning. Those earlier events included Mr. Locey's interaction with Ms. Merritt, Mr. Locey's initial meeting with Mr. Straka, Mr. Straka taking Mr. Locey in tow to the break room, and then the trip to Ms. Merritt's office. Aspects of the interaction and context stand out. It is clear that Mr. Locey was upset with the wage disparity. It is equally clear that Mr. Straka was angry that employees had been discussing wages. Mr. Straka elected to take a heavy-handed, punitive and unprofessional approach to dealing with Mr. Locey's concern. That approach included having Mr. Locey follow in tow as Mr. Straka walked "with a certain dispatch" to the break room to confront the temp workers. That approach is reflected in the repeated demand that Mr. Locey offer up the name of the worker who had disclosed the \$15.00 wage and by the laughter that Mr. Straka directed at Mr. Locey. It is rare in an unemployment insurance hearing for a claimant to state that he is working, does not want unemployment insurance, and just wants to make a point about how an employer treats employees. The weight of the evidence supports the conclusion that Mr. Straka acted in an overbearing and demeaning manner both before and during the final meeting in Ms. Merritt's office. The weight of the evidence supports Mr. Locey's assertion that Mr. Straka moved toward Mr. Locey in a manner that Mr. Locey reasonably perceived to be threatening. Mr. Locey's undisputed response indicated that he was indeed placed in fear. Having heard and considered all of the evidence, the administrative law judge concludes that Mr. Locey's version of events is the more credible version and that the employer's version of events, including the assertion that Mr. Straka remained calm and professional at all times, does not add up.

The weight of the evidence establishes that Mr. Locey's dissatisfaction with the wage disparity was a secondary basis for the quit. If that had been the only basis for the quit, the quit would be

without good cause attributable to the employer. However, the weight of the evidence establishes that the primary basis for the quit was the intolerable and detrimental situation created by the employer on the morning of September 7, 2016.

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

DECISION:

The September 21, 2016, 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/rvs