

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOE JOHNSON**  
Claimant

**APPEAL NO: 10A-UI-16434-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CENTRO INC**  
Employer

**OC: 02-28-10**  
**Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the November 23, 2010, reference 05, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on January 20, 2011. The claimant participated in the hearing. Tracy Lennon, Human Resources Assistant and Terry Waychoff, Business Process Proof Pro, 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 product inspector finisher for Centro from April 19, 2010 to August 6, 2010. On July 30, 2010, co-worker Eric told the claimant he was stuck working with a co-worker who repeatedly walked away from the line because the claimant is black. Another employee overheard the remark and reported it to Business Process Proof Pro Terry Waychoff. Mr. Waychoff met with the claimant and Eric separately and told the claimant he was going to terminate Eric's employment but the claimant did not want Eric to lose his job and had decided he was not offended by the comment. The claimant did not appear overly affected by the situation and told Mr. Waychoff he and Eric were "good friends" and joked around. Mr. Waychoff told him he would not have any discrimination on his team and would not tolerate it on the floor. Mr. Waychoff also told Eric not to talk about the situation. After that Eric repeatedly came to the claimant's table in the break room and asked the claimant, in a sarcastic manner, "Do you mind me sitting next to you. I don't want to offend you." He also told several other employees what happened and the claimant became very uncomfortable at work. On August 3 or 4, 2010, the claimant told Mr. Waychoff he was being harassed by Eric and was having a difficult time working with the whole team because everyone knew about the original incident. Mr. Waychoff offered the claimant the option of moving to a different team in a different building on another machine, moving to any other shift or working on Mr. Waychoff's team on another machine. The employer has three buildings and the claimant could have been

moved to another building or taken his breaks in another building but did not seem interested in those alternatives. The claimant was walking home from work August 5, 2010, when a Ford Explorer pulled up by him and began following him and pointing a laser light at him while a man's voice said, "Are you getting offended by this?" The claimant did not recognize the voice but knew that Eric rode to and from work with two different employees, one of whom drove a Ford Explorer of the same color. There was a police officer sitting in the parking lot of the claimant's building and when the Explorer's occupants saw the officer they did a u-turn and left. The claimant considered telling the officer about the situation but did not want to escalate it. The claimant decided at that time he was not going back to work. He tried to call human resources the following morning but the voice mailbox of the person he called was full and he did not know any other human resources representatives' phone numbers. Next he called Mr. Waychoff and left him a message stating he would not be returning to work and the previous day would be his last. He never told Mr. Waychoff or human resources what happened with the laser and being followed and taunted.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment with 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 dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). 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. The claimant endured a questionable at best remark about his race and further harassment by Eric in asking, sarcastically, if it would "offend" the claimant if he sat with him at break on several occasions. Eric also failed to follow Mr. Waychoff's instructions not to speak of the original incident with co-workers and the fact that the rest of his team knew about the situation made the claimant extremely uncomfortable. The claimant did speak to Mr. Waychoff about the harassment and was offered several options but indicated he was not sure he would be comfortable in any position with the employer. The claimant was followed home from work August 5, 2010, by a Ford Explorer with the occupants shining a laser on him and asking if he was "offended." After that it made the claimant feel physically ill to think about going to work. While the employer was not aware of the final incident, it was aware of the first incident and the following harassment. Under Hy-Vee, Inc. v. Employment Appeal Bd., 710 N.W.2d 1 (Iowa 2005) the claimant was not required to give notice of his intention to quit due to an intolerable, detrimental or unsafe working environment if employer had or should have had reasonable knowledge of the condition. In this case, Eric's actions caused the claimant's work environment to be intolerable and detrimental and the employee who was driving the Explorer, pointing a laser at the claimant and asking if he was offended behavior could rise to the level of unlawful. Consequently, the administrative law judge concludes the claimant has demonstrated that his leaving was attributable to the employer as that term is defined by Iowa law. Therefore, benefits are allowed.

**DECISION:**

The November 23, 2010, reference 05, decision is reversed. The claimant voluntarily left his employment with good cause attributable to the employer. Benefits are allowed provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/css