

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIC R JOHNSON
Claimant

APPEAL NO. 11A-UI-15997-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOBALEE HYDRAULICS
Employer

**OC: 11/06/11
Claimant: Respondent (1)**

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 6, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on January 18, 2012. Claimant Eric Johnson participated. Herb Besaw represented the employer and presented testimony through Cory Mortenson.

ISSUE:

Whether Mr. Johnson'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: The employer manufactures hydraulic cylinders. Eric Johnson was employed by Bobalee Hydraulics as a full-time painter/palletizer from 2005 until November 9, 2011, when he voluntarily quit the employment. Mr. Johnson's immediate supervisor was Cory Mortenson, assembly welding supervisor. Mr. Johnson had last performed work for the employer on November 5, 2011.

A couple months before Mr. Johnson quit, Mr. Mortenson publicly humiliated Mr. Johnson for taking a 10-minute bathroom break. In front of other employees, Mr. Mortenson called Mr. Johnson "a worthless piece of shit." After that incident, Mr. Johnson observed that other employees were allowed to taking 15-20 minute bathroom breaks without incurring similar treatment from Mr. Mortenson.

A month before he quit, Mr. Johnson was working in the employer's drying booth. A coworker intentionally sprayed paint into the drying booth, creating an unsafe work environment. Mr. Johnson complained to Mr. Mortenson. The next day, the coworker berated Mr. Johnson for complaining and called him a crybaby. A couple days before Mr. Johnson quit, the same coworker once again intentionally sprayed paint into the drying booth, creating an unsafe work environment. Mr. Johnson concluded that additional complaints to the employer would make no difference and did not renew his complaint.

Mr. Johnson worked Monday through Friday, 9:00 a.m. to 7:30 p.m., and worked additional weekend hours as required by the employer. On Friday November 4, Mr. Johnson learned that the employer was requiring overtime work on Saturday, November 5. Mr. Johnson later learned that a coworker had told Mr. Mortenson that Mr. Johnson was “whining” about the overtime work and that Mr. Mortenson had said he would fire Mr. Johnson if he did not show up.

As these matters were unfolding at work, Mr. Johnson was dealing with depression. Mr. Johnson had been prescribed anti-depressant medication. Mr. Johnson did not reveal his depression diagnosis or the anti-depressant prescription to the employer. While the matters were unfolding at work, Mr. Johnson was also dealing with his mother’s health issues. After working November 5, Mr. Johnson concluded he could no longer handle the stress associated with the employment. Mr. Johnson notified the employer he could no longer handle the stress and was leaving the employment. Mr. Johnson later appeared to collect his belongings.

The employer had a written harassment policy. The policy directed Mr. Johnson to go to Mr. Mortenson with complaints regarding harassment and to go to the employer’s human resources manager if Mr. Mortenson provided an unsatisfactory response. Plant Manager Herb Besaw functioned as the employer’s human resources manager. Mr. Johnson did not go to Mr. Besaw with his concerns before leaving 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).

The administrative law judge found no reason to discount the credibility of Mr. Johnson’s testimony regarding the workplace experiences that prompted him to leave the employment. The administrative law judge notes that Mr. Johnson’s testimony at the appeal hearing was entirely consistent with the statements he provided to the Workforce Development representative at the fact-finding interview on December 5, 2011. The weight of the evidence establishes that Mr. Mortenson set the tone for the workplace and for Mr. Johnson’s work experience by publicly humiliating him about the bathroom break two months before the quit. The weight of the evidence establishes that Mr. Mortenson did indeed call Mr. Johnson “a

worthless piece of shit” and did so in front of other employees. That one or more employees might take a cue from that incident that it was okay to harass Mr. Johnson is no surprise. The weight of the evidence establishes that Mr. Johnson was thereafter harassed by the same coworker on three occasions: twice with the spraying of paint to create a breathing hazard and another time after Mr. Johnson’s initial complaint to Mr. Mortenson. Mr. Johnson reasonably concluded that further complaint to Mr. Mortenson would make no difference. The work environment was socially toxic for Mr. Johnson, who reasonably concluded it was best to leave the employment.

Mr. Johnson voluntarily quit the employment for good cause attributable to the employer based on intolerable and detrimental working conditions. Mr. Johnson is eligible for benefits, provided he is otherwise eligible. The employer’s account may be charged for benefits paid to Mr. Johnson.

DECISION:

The Agency representatives December 6, 2011, reference 01, decision is affirmed. 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

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