

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**BRYAN L UHRIG
1445 HYW 38
GREELEY IA 52050**

**EMPLOYEE SERVICES LLC
505 E MAIN ST
PO BOX 305
EPWORTH IA 52045-0305**

**Appeal Number: 04A-UI-09878-RT
OC: 08-22-04 R: 04
Claimant: Appellant (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant, Bryan L. Uhrig, filed a timely appeal from an unemployment insurance decision dated September 9, 2004 reference 02, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on October 5, 2004, with the claimant participating. The employer, Employee Services, LLC, did not participate in the hearing because the employer did not call in a telephone number, either before the hearing or during the hearing, where any witnesses could be reached for the hearing, as instructed in the notice of appeal. The administrative law judge takes official notice of Iowa Workforce Development unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time driver/mechanic from the end of April 2004 until he voluntarily quit on August 19, 2004. The claimant quit because of harassment from his supervisor, Rod Horsfield, one of the owners and supervisors. On April 19, 2004, Mr. Horsfield repeatedly called the claimant a "fucker" and continually complained about the claimant's work. The claimant finally got upset and angry and walked off the job. He did not tell anyone he was quitting, he simply walked off the job. The claimant has never returned to the employer and offered to go back to work. The claimant was working at a jobsite in Central City, Iowa, 1½ hours away from the employer's location in Epworth, Iowa. There was no other supervisor or owner or anyone else at the site that the claimant could talk to. The claimant had previously worked with a different foreman until one week before his separation and had had no problems. As soon as he began working with Mr. Horsfield, he began having problems. Mr. Horsfield always seemed angry at the claimant. However, until August 19, 2004, Mr. Horsfield had not used profanity at the claimant. The claimant never expressed any concerns to anyone at the employer about these matters, nor did he ever indicate or announce an intention to quit if any of his concerns were not addressed by the employer.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the claimant's separation from employment was a disqualifying event. It was not.

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.

871 IAC 24.26(2), (3), (4) provide:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (2) The claimant left due to unsafe working conditions.
- (3) The claimant left due to unlawful working conditions.
- (4) The claimant left due to intolerable or detrimental working conditions.

The claimant testified, and the administrative law judge concludes, that he voluntarily left his employment on August 19, 2004. The issue then becomes whether the claimant left his employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with good cause attributable to the employer. See Iowa Code section 96.6-2. Although it is a close question, the administrative law judge concludes that the claimant has met his burden of proof to demonstrate by a preponderance of the evidence that the claimant left his employment with

the employer herein with good cause attributable to the employer. The claimant credibly testified that on August 19, 2004, his supervisor, Rod Horsfield, repeatedly called him "fucker." The claimant also credibly testified that that day Mr. Horsfield was continually criticizing the claimant. The claimant became frustrated and angry and walked off the job. The employer did not participate in the hearing to offer any evidence to the contrary. The administrative law judge concludes that the treatment by Mr. Horsfield, especially the use of the profanity, made the claimant's working conditions intolerable and detrimental. The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context, may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present. Myers v. Employment Appeal Board, 462 N.W.2d 734 (Iowa App. 1990). Here, the profanity directed at the claimant was disrespectful, confrontational and name-calling, and, even though it may have been an isolated incident, the target, the claimant, was present. If such language can establish disqualifying misconduct, then the administrative law judge must conclude that such language establishes an intolerable or detrimental working condition, which would allow a claimant to voluntarily quit with good cause attributable to the employer. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily with good cause attributable to the employer.

The far more difficult question here is whether the claimant gave the employer a reasonable opportunity to address his concerns. The claimant credibly testified that he did not express any concerns to anyone at the employer about these matters, nor did he indicate or announce an intention to quit prior to his quit if his concerns were not addressed. Ordinarily, this would defeat the claimant's requirement to show good cause attributable to the employer. However, the claimant here credibly testified that Mr. Horsfield was one of the owners and supervisors and was the only supervisor at the worksite where he was employed. The claimant further credibly testified that he was employed in Central City, Iowa, 1½ hours away from the employer's location in Epworth, Iowa. The claimant also credibly testified that he did not believe it would do any good to complain to anyone, and especially not to Mr. Horsfield because he was the one who was using the language. The claimant did concede that he could have contacted Pat Horsfield, the chief executive officer, or perhaps an old foreman under which the claimant worked and got along well, but the claimant did not. Although it is a close question, the administrative law judge concludes, that in this particular situation, the claimant was justified in not expressing his concerns to the employer or threatening to quit prior to his quit. Basically, there was no one available at the worksite that the claimant could consult, or confront, or talk to. The administrative law judge also notes that the claimant had only worked for Mr. Horsfield for approximately one week. Prior to that the claimant had worked with another foreman and had had no trouble getting along. Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant left his employment voluntarily with good cause attributable to the employer and, as a consequence, he is not disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant, provided he is otherwise eligible.

DECISION:

The representative's decision dated September 9, 2004, reference 02, is reversed. The claimant, Bryan L. Uhrig, is entitled to receive unemployment insurance benefits, provided he is otherwise eligible because he left his employment voluntarily with good cause attributable to the employer.

b/b