

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENNIS C HEGGEN
Claimant

APPEAL NO. 08A-UI-05113-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BANNER VALLEY HAULING
Employer

OC: 04/27/08 R: 03
Claimant: Respondent (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Banner Valley Hauling filed a timely appeal from the May 20, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 11, 2007. Claimant Dennis Heggen participated. James Garnet, Chief Executive Officer, represented the employer and presented additional testimony through Secretary Lindsay Mally and owner Sherry Garnet. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant.

ISSUE:

Whether the claimant'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: Dennis Heggen was employed by Banner Valley Hauling as a full-time General Manager from November 5, 2007 until April 29, 2008, when he voluntarily quit. The employer is a waste hauling enterprise. James Garnet, C.E.O., and Sherry Garnet, owner, interviewed and hired Mr. Heggen. Mr. Heggen was the first General Manager the employer hired. At the time of hire, the Garnets and Mr. Heggen discussed what his duties as General Manager would include. The duties were to include scheduling and supervising drivers. The duties were to include hiring, firing, and disciplining employees. The duties were to include conducting safety meetings and obtaining training materials. The duties included other duties generally associated with a General Manager position.

After Mr. Heggen accepted the position, he learned as events unfolded that Mr. Garnet was unwilling to delegate the General Manager duties that Mr. Garnet had previously performed. Mr. Heggen found that many, if not most or all, of the decisions he made were second-guessed, vetoed, or reversed by Mr. Garnet. Mr. Garnet would make his feelings known in front of other employees and would use offensive and/or profane language. Mr. Garnet's conduct undermined Mr. Heggen's authority to supervise the staff. Mr. Heggen found himself increasingly relegated to duties that were consistent with being a general laborer, but inconsistent with the duties of a General Manager.

The last straw that triggered Mr. Heggen's quit occurred on the day of the quit. Mr. Heggen had important matters he needed to discuss with Mr. Garnet. Mr. Garnet indicated he was too busy. After Mr. Garnet indicated he was too busy to speak with Mr. Heggen, Mr. Garnet made time to make several more calls and to speak with other employees. Mr. Heggen notified Mrs. Garnett that he was quitting due to the inability to effectively communicate with Mr. Garnet. At the time, Mrs. Garnet agreed with Mr. Heggen's assessment of communication issues.

A week prior to the quit, an employee had asked Mr. Heggen for a ride back to the plant the employer served. Mr. Garnet was in a meeting and, therefore, Mr. Heggen was unable to run the request by Mr. Garnet. Mr. Heggen agreed to take the driver back to the plant. Soon after Mr. Heggen and the worker departed, Mr. Heggen received a call from secretary Lindsay Mally that he was to return to the office immediately. When Mr. Heggen returned, Mr. Garnet launched into a tirade directed at both employees. Mr. Garnet asked Mr. Heggen, "Who the hell do you think you are, taking him back up there on your own?" Mr. Garnet continued with, "What the fuck, you guys think you're running this business now?" Mr. Heggen had a nervous grin because of the uncomfortable situation. Mr. Garnet erroneously interpreted Mr. Heggen's facial expression as a challenge to his authority and asked him what he was laughing about. The demeanor Mr. Garnet expressed during this interaction was consistent with Mr. Garnet's general demeanor throughout Mr. Heggen's 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.

871 IAC 24.26(1) provides:

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:

- (1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986).

Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. Id. An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See Olson v. Employment Appeal Board, 460 N.W.2d 865 (Iowa Ct. App. 1990).

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).

An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995). Use of foul language can alone be a sufficient ground for a misconduct disqualification for unemployment benefits. Warrell v. Iowa Dept. of Job Service, 356 N.W.2d 587 (Iowa Ct. App. 1984). An isolated incident of vulgarity can constitute misconduct and warrant disqualification from unemployment benefits, if it serves to undermine a superior's authority. Deever v. Hawkeye Window Cleaning, Inc. 447 N.W.2d 418 (Iowa Ct. App. 1989).

Just as the employer had the right to expect decency and civility in its employees, Mr. Heggen had the right to expect that the employer would treat him with decency and civility. This is not how the employer behaved. Mr. Garnet felt at liberty to direct demeaning, offensive comments at Mr. Heggen in the presence of other staff. This alone would have provided good cause for Mr. Heggen to quit the employment.

The evidence further indicates that the employer misrepresented the duties Mr. Heggen would have as General Manager at the time the employer interviewed and hired Mr. Heggen. The evidence further indicates that the employer subjected Mr. Heggen to an ongoing diminishment of responsibilities to the point where Mr. Heggen was unable to function as a manager to any meaningful extent. The evidence indicates circumstances that would have prompted a reasonable person to quit the employment.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Heggen voluntarily quit the employment for good cause attributable to the employer. Accordingly, Mr. Heggen is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Heggen.

DECISION:

The Agency representative's May 20, 2008, 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

jet/pjs