

**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**

**GENAIL O POSTLEY
7458 – 9TH ST
MARION IA 52302**

**WHITTERS WILLIAM
BILL WHITTERS CONSTRUCTION
1303 HICKORY HOLLOW RD N
SOLON IA 52333-9292**

**Appeal Number: 05A-UI-08528-JTT
OC: 07/17/05 R: 03
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 Quit
871 IAC 24.26(4) – Intolerable or Detrimental Working Conditions

STATEMENT OF THE CASE:

Genail Postley filed a timely appeal from the August 9, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 1, 2005. Mr. Postley participated. Industrial Superintendent Joe Gregory represented the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Genail Postley was employed by Bill Whitters Construction as a full-time laborer from May 7, 2004 until June 10, 2005, when he quit due to intolerable working conditions. Mr. Postley's immediate supervisor was Lead Foreman Tony Clark. Mr. Clark's immediate supervisor was Industrial Superintendent Joe Gregory.

Mr. Postley's quit was prompted by the treatment he received from Mr. Clark and Mr. Gregory. Early in Mr. Postley's employment, Mr. Gregory assigned to Mr. Postley the nickname "L.A.," short for "Lead Ass," because he thought Mr. Postley did not move quickly enough. Mr. Gregory continued to refer to Mr. Postley by the nickname on a regular basis, in front of other employees, throughout the employment. At one point, Mr. Postley confronted Mr. Gregory about the nickname and asked when Mr. Gregory was going to stop calling him that. Mr. Gregory's response was that he would stop using the nickname when Mr. Postley learned to walk faster. Mr. Gregory approached Mr. Postley about a rumor that Mr. Postley used drugs and advised Mr. Postley that he was on his way to being fired. Mr. Postley offered to take a drug test, but the offer was rejected.

Mr. Clark's remarks and actions went much further than the nickname Mr. Gregory assigned to Mr. Postley. On several occasions when Mr. Postley attempted to sign up for weekend overtime, Mr. Clark prevented him from doing so because he wanted Mr. Postley to perform work at Mr. Clark's home. Mr. Clark would tell Mr. Postley that he wanted to "rent" him for the weekend. Mr. Clark did not intend to pay Mr. Postley, but indicated that he would feed him. On more than one occasion, Mr. Clark made comments about Mrs. Postley's full bosom and that he wanted to "rent" her for the weekend as well. Mr. and Mrs. Postley are African-American.

Much of Mr. Clark's inappropriate and offensive conduct toward Mr. Postley occurred while the construction staff ate lunch in the same trailer. Mr. Clark would approach Mr. Postley while Mr. Postley was eating his lunch, would pull hair from his pubic area, and would place the pubic hair near Mr. Postley's food. On other occasions, Mr. Clark would approach Mr. Postley while Mr. Postley was eating his lunch, turn his back to Mr. Postley and pass gas. Mr. Postley frequently brought shrimp for lunch and Mr. Clark suggested that Mr. Postley got his lunches from the dumpster at Red Lobster. Mr. Clark would reference newspaper headlines regarding individuals arrested for criminal offenses, particularly drug offenses, and would ask Mr. Postley whether the arrestee was one of Mr. Postley's relatives.

Mr. Postley also observed that he seemed to receive more severe reprimands than other employees did under similar circumstances. Mr. Postley observed this to be the case even where the reprimands arose from the same incident and a coworker bore greater responsibility for the incident.

The last straw that prompted Mr. Postley to quit occurred on June 10, 2005. Mr. Postley had traveled to Michigan to deal with a family crisis and had returned to Iowa in the early hours of June 10. Mr. Postley had slept five hours on the return trip. Mr. Postley contacted Mr. Clark to let him know that he would be late, but was able and prepared to work. Mr. Clark told Mr. Postley not to come to work because he would be too tired. Mr. Postley decided at that point that he could no longer work for the employer.

REASONING AND CONCLUSIONS OF LAW:

The question for the administrative law judge is whether Mr. Postley's quit was for 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.

Since Mr. Postley quit the employment, he has the burden of proving that the quit was for good cause attributable to the employer. Iowa Code section 96.6(2).

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.25(4). However, before such a quit will be considered for good cause attributable to the employer, the evidence must show that before the claimant resigned (1) the employer was on notice of the condition, (2) the employer was on notice that the claimant might quit if the condition was not addressed, and (3) the employer had a reasonable opportunity to address the claimant's legitimate concerns. See Suluki v. Employment Appeal Board, 503 N.W.2d 402 (Iowa 1993); Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993); and Swanson v. Employment Appeal Board, 554 N.W.2d 294 (Iowa 1996). An equally important 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).

The evidence in the record establishes that Mr. Postley quit the employment due to working conditions that a reasonable person would deem intolerable and detrimental. Though the final straw that prompted the quit appears an insignificant event compared to what Mr. Postley had previously endured in the course of the employment, it was yet another instance of Mr. Postley being negatively impacted by the apparent whim of his immediate supervisor. Mr. Postley's supervisors were well aware of the intolerable and detrimental working conditions. Mr. Postley had confronted Mr. Gregory regarding the least heinous of the insults to his dignity and was met with a direct refusal to amend the behavior. It was foreseeable that Mr. Postley, or any other reasonable person, would quit the employment under the circumstances. Mr. Clark and Mr. Gregory had ample opportunity to amend their behavior, but elected not to do so. Though Mr. Postley downplayed the racial component of the behavior directed toward him, the evidence indicates that race was indeed a factor in the offensive and inappropriate behavior directed at Mr. Postley.

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

DECISION:

The Agency representative's August 9, 2005, 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 assessed for benefits paid to the claimant.

jt/kjw