

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAMERON J HERRIOTT
Claimant

APPEAL NO. 17A-UI-10355-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SELVAGE PLUMBING INC
Employer

OC: 09/24/17
Claimant: Respondent (2)

Iowa Code section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 10, 2017, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on the claims deputy's conclusion that the claimant voluntarily quit on September 22, 2017, for good cause attributable to the employer. After due notice was issued, a hearing was held on October 26, 2017. Claimant Cameron Herriott did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Dustin Selvage represented the employer. Exhibits 1 and 2 were received into evidence. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant, which record reflects that no benefits have been disbursed to the claimant in connection with the claim that was effective September 24, 2017.

ISSUES:

Whether the claimant's voluntary quit was for good cause attributable to the employer.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Cameron Herriott was employed by Selvage Plumbing, Inc. as a full-time plumber's apprentice until September 22, 2017, when he voluntarily quit due to perceived intolerable and detrimental working conditions. On the day that Mr. Herriott quit the employment, he notified the employer by text message that he would not be reporting for work due to an aching tooth and the need to see a dentist. Mr. Herriott sent the same text message to the journeyman plumber that he was assigned to work with that day. The journeyman plumber, Dustin Fisher, sent a reply text in which he referred to Mr. Herriott as a "pussy." Mr. Fisher had been with the employer for approximately a week. The employer took the journeyman's text message as nothing more than jobsite banter with no ill intent. After Mr. Herriott received the message from the journeyman, he notified the employer that he would no longer work with Mr. Fisher and would not be returning to the employment unless the employer assigned him to work with someone else. . The employer had previously changed Mr. Herriott's work assignment in response to interpersonal conflict between Mr. Herriott and other employees.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 213 (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). Employees have a similar right to expect decency and civility from the employer and coworkers.

Iowa Admin. Code r. 871-24.25(6) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(6) The claimant left as a result of an inability to work with other employees.

Iowa Admin. Code r. 871-24.25(21) provides:

Voluntary quit without good cause. 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. The employer

has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(21) The claimant left because of dissatisfaction with the work environment.

When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See *Crosser v. Iowa Dept. of Public Safety*, 240 N.W.2d 682 (Iowa 1976).

Mr. Herriott did not participate in the hearing and did not present any evidence to prove that his voluntary quit was for good cause attributable to the employer. The evidence in the record establishes a quit prompted by an isolated vulgar utterance. The utterance was crude and demeaning, but part of the common parlance between men in certain contexts. A reasonable person would expect a construction jobsite might be such a context where one might readily encounter such language as typical jobsite banter. One can see why Mr. Herriott would complain to the employer. However, given the particular context of Mr. Fisher's utterance, and the absence of evidence from Mr. Herriott to establish aggravating factors or any other similar conduct, the administrative law judge concludes that the isolated utterance did not rise to the level of intolerable and/or detrimental conditions that would cause an employee to permanently sever the employment relationship. Mr. Herriott quit due to dissatisfaction with the work environment.

Based on the evidence and application of the law, the administrative law judge concludes that Mr. Herriott's voluntarily quit was without good cause attributable to the employer. Accordingly, Mr. Herriott is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Herriott must meet all other eligibility requirements. The employer's account shall not be charged for benefits. Because no benefits have been paid in connection with the claim, there is no overpayment issue to address.

DECISION:

The October 10, 2017, reference 01, decision is reversed. The claimant voluntarily quit the employment on September 22, 2017 without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs