

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONALD R WESTBROOK
Claimant

APPEAL NO. 12A-UI-10119-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PINNACLE HEATING & COOLING INC
Employer

OC: 07/29/12
Claimant: Appellant (2)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Ronald Westbrook filed a timely appeal from the August 17, 2012, reference 01, decision that denied benefits based on an agency conclusion that he had voluntarily quit without good cause attributable to the employer on July 27, 2012. After due notice was issued, a hearing was held on September 14, 2012. Mr. Westbrook participated. Matt Jaminet represented the employer and presented additional testimony through Noah White.

ISSUE:

Whether Mr. Westbrook separated from the employment for a reason that disqualifies him for unemployment insurance benefits. The administrative law judge concludes that Mr. Westbrook voluntarily quit in response to a change in policy regarding personal cell phone use and in response to intolerable and detrimental working conditions, namely, the employer calling him a “stupid fucking retard” and the “stupid fucking idiot.”

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ronald Westbrook was employed by Pinnacle Heating & Cooling as a full-time installer from 2010 until July 27, 2012, when he voluntarily quit. On that day, Matt Jaminet, president, pulled Mr. Westbrook aside to tell him, in a heavy-handed manner, that he was changing the employer’s policy concerning personal cell phones and was banning them. Mr. Jaminet asserted that Mr. Westbrook was spending too much time on his personal cell phone and was not generating sufficient revenue. On that day, Mr. Westbrook had been on his cell phone in connection with his 17-year-old daughter not coming home the night before. Mr. Jaminet told Mr. Westbrook that if he got caught on his personal cell phone, he would be sent home the first time it happened and would no longer be working for the employer if it happened a second time. When Mr. Westbrook protested that he was being singled out and being forced to choose between work and family, Mr. Jaminet called Mr. Westbrook a “stupid fucking retard” and a “stupid fucking idiot” and told him to listen. Mr. Westbrook told Mr. Jaminet that he was leaving. Mr. Jaminet responded, “Get your fucking shit and leave.” As Mr. Westbrook was outside cleaning his tools out of the employer’s vehicle, another employee, Noah White, encountered

him and asked him what he was doing. Mr. Westbrook responded, "I'm leaving. I'm tired of this bullshit. I'm done."

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).

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 employee has the same right to expect decency and civility from the employer.

The way the evidence indicates that Mr. Westbrook quit for two reasons. First, he quit over the change in personal cell phone policy, the employer's decision to ban personal cell phones. If that were the sole basis for the quit, the quit would be without good cause attributable to the employer. However, Mr. Westbrook's quit was also in response to the employer's verbal abuse. The weight of the evidence indicates that Mr. Jaminet did indeed call Mr. Westbrook a "stupid fucking retard" and a "stupid fucking idiot." The verbal abuse constituted an intolerable and detrimental working condition that would have prompted a reasonable person to leave the employment.

Mr. Westbrook voluntarily quit the employment for good cause attributable to the employer, based on verbal abuse perpetrated by the employer on July 27, 2012. Accordingly, Mr. Westbrook is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Westbrook.

DECISION:

The Agency representatives August 17, 2012, 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 charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw