DIVISION OF EMPLOYMENT SECURITY
NC DEPARTMENT OF COMMERCE

PRECEDENT DECISION NO. 15

IN RE VAUGHN
(Adopted August 18, 1984)

FINDINGS OF FACT:

1. The claimant last worked for the employer on April 3, 1984. From April 1, 1984 until April 7, 1984, the claimant has registered for work and continued to report to an employment office of the Commission and has made a claim for benefits in accordance with G.S. 96-15(a) as of the time the Adjudicator issued a determination. The claimant appealed the Adjudicator's determination, and an evidentiary hearing was held by Mitchell A. Wolf, Appeals Referee, under Docket No. V-UI-7331, who held that the claimant was not disqualified for unemployment benefits. The employer filed a timely appeal to the Commission.

2. Claimant quit her job. She was not discharged by the above-named employer.

3. On claimant's last day of work, she was given the option of either performing the work requested of her by the employer or leaving the job. The work requested of claimant was within her job description as a dental technician. Further, claimant could have performed the tasks. Claimant, however, wanted to perform housekeeping tasks which were not within her job description.

4. After being given the option as indicated above, claimant made out her paycheck for the days she had worked and handed it to the employer to sign. The employer signed the check. Claimant left and did not return to the employer's place of business for the purpose of performing work. At the time claimant left, her workday had not been completed. Had claimant not left her job, continuing work was available for her there.

5. During the discussion which led to the employer directing the claimant to either do the work or leave the job, both the claimant and the employer used obscene words and spoke in a loud tone of voice. The use of obscenity and

loud tone of voice was not unusual in the working relationship between the employer and the claimant.

6. Claimant did not leave the job because of the employer's use of obscenity and loud tone of voice. She left the job because she interpreted the ultimatum given to her by the employer to mean that she had been 'fired'. At no time did the claimant convey to the employer that she thought such an ultimatum constituted a 'firing'. Since claimant did not initially perform the work which she was asked to do but instead left the employer's place of business, the employer thought claimant had quit the job.

MEMORANDUM OF LAW:

The Employment Security Law provides that an individual shall be disqualified from receiving unemployment insurance benefits if it is determined that she voluntarily quit her job without good cause attributable to the employer or was discharged for misconduct or substantial fault connected with the work. G.S. 96-14(l), (2), and (2A). Whether an employee voluntarily terminates her employment or is discharged is a question of law.

Initially, we must decide whether claimant's leaving work on April 3, 1984 and not thereafter returning to her job was a voluntary termination of her employment or whether she was, in fact, discharged. The critical testimony relative to the matter is that of the claimant, as follows:

> A: Then he said, If you don't want to do the work, just get out. And that was it for me, I mean, I considered myself fired ....
>
> Q: Okay. Thank you.
>
> ATTORNEY FOR CLAIMANT: Now, what did you do after that encounter? Did you, did you walk out of your laboratory?
>
> A: Yes, I took my pocketbook, went out the door, but I didn't have a car, because I carpool with this other lady, so I was standing out on the sidewalk no place to go. So I had to go back in and make a phone call and talk to my husband and tell him to get me. And, but he was not at the place he was supposed to be by the time this all happened, so I had to wait a few minutes for him to arrive there, so I could call him. I kind of just sat around waiting for him to get there. I did the crown, as Dr.

> Walton told me, so he could not say that I didn't do what he told me. And a few minutes later, I called my husband and said, I consider myself fired ....

In order for an employer's language to be interpreted as a discharge, it must possess the immediacy and formality of a 'firing.' Lawlor v. Unemployment Compensation Board of Review, 37 Pa. Commonwealth Ct. 380, 391 A2d 8, (1978); Rizzitano v. Unemployment Compensation Board of Review, 32 Pa. Commonwealth Ct. 59, 377 A2d 1060 (1977). The degree of certainty in an employer's language resulting in a termination is often the difference between those cases in which the employee's termination was voluntary and those in which the employer's rather than the employee's act effected the termination.

In the present case, the Appeals Referee held that the claimant had been discharged from her job. The Adjudicator, with much less evidence before it than the Appeals Referee, found that the claimant had voluntarily left her employment. The undersigned is of the opinion that the Appeals Referee erred in finding that claimant was discharged from her job since the record evidence clearly shows that it was the claimant's act rather than the employer's which effected the termination of her employment. Claimant was given a reasonable alternative between performing a task which was within her job description or leaving the job. Claimant opted to do the latter rather than the former.

Claimant was neither coerced nor pressured by the employer to leave her job. The only pressure or coercion applied by the employer was to get claimant to perform the duties of her job and a reasonable man or woman under similar circumstances would have interpreted the employer's remarks in this manner. For the foregoing reasons, the undersigned concludes that, as a matter of law, claimant voluntarily left her job and was not discharged by the employer. The remaining question is whether such leaving was with good cause attributable to the employer.

The burden of showing good cause attributable to the employer for the voluntary leaving of a job is upon the claimant. In re Hodges, 49 N.C. App. 189, 270 S.E.2d 599 (1980); In re Vinson, 42 N.C. App. 28, 255 S.E.2d 644 (1979). "Good cause" as used in the statue, connotes a reason for rejecting work that would be deemed by reasonable men and women as valid and not indicative of an unwillingness to work. Sellers v. National Spinning Company and ESC, 614 N.C. App. 567, 307 S.E.2d 774, disc. rev. denied, 309 N.C. 464 (1983). "Attributable to the employer" as used in G.S. 96-14(l) means "produced, caused, created or as a result of actions by the employer." Sellers, supra; Vinson, supra.

The Appeals Referee found that if claimant's separation from employment constituted a voluntary leaving within the meaning of the law, "the employer's verbal abuse towards the claimant was sufficient and good cause for the claimant to voluntarily leave her position..." However, claimant's own testimony fails to establish that the decision to terminate her employment was, directly or indirectly, related to the use of obscenity and/or loud tone of voice by her employer. By her own admission, claimant left the job because she interpreted a particular remark made by her employer as a 'firing", not because of the employer's use of obscenity and/or a loud tone of voice.

Even if claimant left her job because of the obscenity and loud tone of voice utilized by the employer, the undersigned is not persuaded that working conditions had become so intolerable or unbearable that the claimant had no-alternative but to terminate her own employment. Obscenity and/or a loud tone of voice was not unusual in the working relationship between the claimant and her employer and appears to have been used by the claimant as often as it was used by the employer.

It is concluded that claimant has not carried her burden of proof and the findings of fact and record evidence clearly show that claimant's voluntary leaving was without good cause attributable to the employer.

The above conclusion does not constitute a condonation of an employee's or employer's use of obscenity and/or loud tone of voice within an employer-employee relationship. However, if such behavior is common practice within the relationship, it is not usually considered a basis for terminating employment by either the employer or employee. To justify a termination of employment when such practice exists, it must be shown that the obscenity and/or loud tone of voice went beyond that which was commonly engaged in by the parties and that a reasonable man or woman, under similar circumstances, would have deemed such behavior as being a valid reason for terminating employment.

The claimant must, therefore, be disqualified for benefits.