

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GERALD C MCCHESENEY
Claimant

APPEAL NO. 15A-UI-02337-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ZACHRY INDUSTRIAL INC
Employer

OC: 01/11/15
Claimant: Appellant (1)

Section 96.5(1)(c) – Voluntary Quit to Care for Sick Family Member

STATEMENT OF THE CASE:

Gerald McChesney filed a timely appeal from the February 20, 2015, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on an Agency conclusion that he had voluntarily quit on September 25, 2015 without good cause attributable to the employer. After due notice was issued, a hearing was held on March 25, 2015. Chad Tieke, Administrative Manager, represented the employer. Mr. McChesney did not provide a telephone number for the hearing. However, after Mr. McChesney filed his appeal by fax on February 20, 2015, he mailed a three page letter the Appeals Bureau on February 26, 2015. The administrative law judge construed the claimant's letter to be a written statement in lieu of participating in the hearing and received the statement into the hearing record as Exhibit A.

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: Gerald McChesney was employed by Zachry Industrial, Inc. as a full-time electrician from August 18, 2014 until September 24, 2014 when he voluntarily quit. Mr. McChesney resides in Florida. Mr. McChesney's work for the employer was at a construction site in Muscatine, Iowa. On September 25, 2014, Mr. McChesney notified Site Manager Bobby Elliott that his father had medical issues and that Mr. McChesney was quitting to go home to Florida to take care of his father. The employer did not know what Mr. McChesney's father's medical issues were. Mr. McChesney participated in an exit interview. The employer gave Mr. McChesney good a good review. The employer continued to have work for Mr. McChesney at the Muscatine site at the time Mr. McChesney voluntarily quit. The employer had not given Mr. McChesney notice of layoff. Mr. McChesney was not laid off, temporarily or otherwise. Mr. McChesney did not return to the employer to offer his services.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(1)(c) provides as follows:

96.5 Causes for disqualification.

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. But the individual shall not be disqualified if the department finds that:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

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.

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. McChesney did not provide a telephone number for the appeal hearing and did not provide sworn testimony at the hearing. Mr. McChesney's participation in the hearing was limited to the unsworn written statement he had mailed to the Appeals Section on February 26, 2015. Mr. McChesney's unsworn written statement is not a substitute for testimony given under oath. Mr. McChesney had the ability to present more direct and satisfactory evidence, but elected not to present such evidence.

The weight of the evidence in the record establishes a voluntary quit, effective September 25, 2014, that was without good cause attributable to the employer. Mr. McChesney has presented insufficient evidence to establish that it was necessary for him to separate from the employment to care for his father or that his father was ill or injured. Mr. McChesney's unsworn written statement is insufficient to rebut the employer's sworn testimony that Mr. McChesney did not make further contact with the employer to request to return to the employment. Mr. McChesney has failed to meet his burden of proving, by a preponderance of the evidence, which his voluntary separation from the employment was for good cause attributable to the employer. Mr. McChesney is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits.

DECISION:

The February 20, 2015, reference 01, decision is affirmed. The claimant voluntarily quit the employment, effective September 25, 2014, without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in a been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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