

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

BRIAN C HOOVER
Claimant

APPEAL NO. 19A-UI-04209-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ALUMINUM CO OF AMERICA
DAVENPORT WORKS**
Employer

OC: 04/28/19
Claimant: Appellant (5)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Brian Hoover filed a timely appeal from the May 17, 2019, reference 01, decision that held he was disqualified for benefits and the employer's account would not be charged for benefits, based on the deputy's conclusion that Mr. Hoover was discharged on May 1, 2019 for excessive unexcused absences. After due notice was issued, a hearing was held on June 18, 2019. Mr. Hoover participated. Jason Mucciarone represented the employer. Exhibits 1 and A were received into evidence.

ISSUES:

Whether Mr. Hoover was discharged for misconduct in connection with the employment.

Whether Mr. Hoover voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Brian Hoover was employed by Aluminum Company of America (Alcoa) as a full-time production operator. Mr. Hoover began the employment in April 2018. Mr. Hoover was assigned to the overnight shift and his work hours were 6:00 p.m. to 6:00 a.m. Mr. Hoover would be scheduled to work 36 hours one week and 48 hours the next. Mr. Hoover last performed work for the employer on March 17, 2019. Mr. Hoover did not thereafter return to work. Mr. Hoover called in absences for all of his shifts over the next roughly month and a half. Mr. Hoover followed in the call in procedure, but reported through that system that his absences were due to personal illness. Mr. Hoover asserts that he needed to be off work to care for his then fiancé who had been diagnosed with walking pneumonia, a mild form of pneumonia. Mr. Hoover did not apply for a leave of absence and did not provide the employer with any medical documentation substantiating his need to be away from the employment for an extended period to care for his fiancé.

Mr. Hoover has provided a single medical document for the appeal hearing. That document is a portion of the health provider certification form related to his fiancé's employment. The

document is dated April 9, 2019. That documentation says nothing about Mr. Hoover's fiancé needing a caretaker. Indeed, the documentation releases the fiancé to return to work for a couple hours a day effective March 1, 2019 through May 1, 2019. The documentation refers to the fiancé's symptoms as shortness of breath, cough and wheezing and refers to fiancé's need to use a nebulizer every four hours.

In mid-April an employer representative spoke to Mr. Hoover by telephone regarding his need to commence reporting for work. Mr. Hoover agreed to report for work, but then did not report for work.

On April 30, 2019, the employer sent Mr. Hoover a letter stating that the employer deemed the employment terminated effective April 30, 2019. The letter referenced a collective bargaining agreement provision under which an absence without leave for six consecutive days or longer would result in loss of seniority. Mr. Hoover received the letter on May 1, 2019 and contacted the employer in response to the letter. During that contact, the employer reinforced that the employer considered the employment terminated.

REASONING AND CONCLUSIONS OF LAW:

Iowa Administrative Code rule 871-24.1(113) characterizes the different types of employment separations as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

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 Iowa Administrative Code rule 871-24.25.

The weight of the evidence in the record establishes a voluntary quit that was effective March 17, 2019. The employer continued to have work for Mr. Hoover until April 30, 2019. However, Mr. Hoover did not report for work after March 17, 2019. The evidence in the record does not support Mr. Hoover's assertion that he needed to remain off work for about a month and a half to care for his fiancé. Indeed, the one medical document Mr. Hoover submitted for the hearing indicates that his fiancé was released to return to work on a limited but daily basis.

Mr. Hoover's pattern of not reporting for work subsequent to March 17, 2019 was sufficient to establish a voluntary quit despite Mr. Hoover's continued perfunctory reporting of the absences through the automated absence reporting system.

Iowa Code section 96.5(1)c 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. 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.

Iowa Code section 96.5(1)f 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. But the individual shall not be disqualified if the department finds that:

f. The individual left the employing unit for not to exceed ten working days, or such additional time as may be allowed by the individual's employer, for compelling personal reasons, if so found by the department, and prior to such leaving had informed the individual's employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist the individual returned to the individual's employer and offered the individual's services and the individual's regular or comparable work was not available, provided the individual is otherwise eligible; except that during the time the individual is away from the individual's work because of the continuance of such compelling personal reasons, the individual shall not be eligible for benefits.

Because the evidence in the record fails to support Mr. Hoover's assertion that it was necessary for him to miss work for roughly a month and a half to care for his fiancé, the voluntary quit was without good cause attributable to the employer. Accordingly, Mr. Hoover is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. Mr. Hoover must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The May 17, 2019, reference 01, decision is modified as follows. The claimant voluntarily quit the employment without good cause attributable to the employer. The quit was effective March 17, 2019. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 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