

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICK S MILLER**

Claimant

**APPEAL NO. 17A-UI-02368-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MEDIACOM COMMUNICATIONS**

Employer

**OC: 01/29/17**

**Claimant: Appellant (4)**

Iowa Code Section 96.5(1)(a) – Voluntary Quit to Accept Other Employment

**STATEMENT OF THE CASE:**

Rick Miller filed a timely appeal from the February 22, 2017, reference 01, decision that disqualified him benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Mr. Miller voluntarily quit on September 2, 2017 without good cause attributable to the employer to relocate to a new locality. After due notice was issued, a hearing was held on March 24, 2017. Mr. Miller participated. Dan Wolfe, Director of Human Resources, represented the employer. Exhibits A through D were received into evidence.

**ISSUES:**

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

Whether Mr. Miller voluntarily quit the employment to accept other employment.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Rick Miller was employed by Mediacom Communications as a full-time Broadband Specialist II from 2011 until September 2, 2016, when he voluntarily quit. The work involved installing broadband cable service and troubleshooting broad band issues. Mr. Miller's immediate supervisor was Gary Mikkelson, Technical Operations Supervisor. During the employment, Mr. Miller lived in and worked in Storm Lake. Mr. Miller's final wage was \$15.37 per hour. Mr. Miller is from Indiana. At the time Mr. Miller gave notice of his quit, he told the employer that he was leaving to move back to Indiana to be close to his family.

Though Mr. Miller did not mention this factor when he provided he quit notice, Mr. Miller's health was a factor in his decision to leave the employment. Mr. Miller is 59 years old. Mr. Miller underwent surgery on his leg in February 2016. Toward the end of the employment, Mr. Miller found the physical demands of the employment more difficult to. A doctor did not advise Mr. Miller to leave the employment.

At the time Mr. Miller left the employment on September 2, 2017, he had accepted full-time employment with his son's title abstracting company. That work would be much less physically taxing, but would also pay less, \$10.00 per hour. Mr. Miller began the new employment on October 17, 2017. Though the arrangement was mischaracterized as independent contracting, ostensibly for tax liability purposes, Mr. Miller was in fact an employee of his son's company. He was paid an hourly wage. He was initially paid weekly and later was paid biweekly. He performed the work according to instructions provided by his son and/or daughter-in-law. He did not provide any equipment or investment in the business venture and could not suffer a financial loss for non-performance beyond being termination from the employment. Mr. Miller separated from the new employment in January 2017.

Mr. Miller established a claim for unemployment insurance benefits that was effective January 29, 2017.

### **REASONING AND CONCLUSIONS OF LAW:**

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.

Iowa Code section 96.5(1)(a) provides as follows:

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:
  - a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Iowa Admin. Code r. 871-24.28(5) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

- (5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. The employment does not have to be covered employment and does not include self-employment.

Iowa Admin. Code r. 871-23.43(5) provides:

- (5) Sole purpose. The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is

separated, before or after having started the new employment. No charge shall accrue to the account of the former voluntarily quit employer.

Iowa Admin. Code r. 871-24.25(2) 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:

(2) The claimant moved to a different locality.

The weight of the evidence in the record establishes that Mr. Miller voluntarily quit the employment with Mediacom Communications for the sole purpose of relocating to Indiana so that he could commence new employment with his son's company. The new employment was better insofar as it was much less physically taxing and, therefore, better suited to Mr. Miller's physical abilities. The quit was without good cause attributable to the employment. The employer's account will not be assessed for benefits. Because the quit was based on acceptance of other employment, the quit does not disqualify Mr. Miller for unemployment insurance benefits. Mr. Miller is eligible for benefits provided he meets all other eligibility requirements.

**DECISION:**

The February 22, 2017, reference 01, decision is modified as follows. The claimant voluntarily quit the employment effective September 2, 2016 to accept other employment. The quit was without good cause attributable to the employer. The employer's account will not be charged for benefits. The claimant is eligible for benefits provided he meets all other eligibility requirements.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs