

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN D MORRISON
Claimant

APPEAL NO: 18A-UI-03109-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

M A MORTENSON CO
Employer

OC: 02/04/18
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Brian D. Morrison, the claimant, filed a timely appeal from a representative's unemployment insurance decision dated March 2, 2018, (reference 01) which denied unemployment insurance benefits finding that the claimant voluntarily left employment on October 3, 2017, without good cause attributable to the employer. After due notice was provided, a telephone hearing was scheduled for and held on April 4, 2018. Mr. Morrison participated personally. Although duly notified, the employer did not participate.

ISSUE:

Whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds: Mr. Morrison was employed by M. A. Mortenson Company from September 7, 2017 until October 3, 2017, when he voluntarily left employment. Mr. Morrison was employed as a full-time heavy equipment operator and was paid by the hour. His immediate supervisor was Dave (last name unknown).

Mr. Morrison left his employment with the captioned company in order to seek employment with other companies that would offer more working hours.

During the approximate four weeks that Mr. Morrison was employed the M. A. Mortenson Company, the number of working hours available to him had been reduced by inclement weather as well as procedural issues such as permitting permits. Mr. Morrison was residing in a hotel during this time, however the employer was not offering per diem pay to the claimant and he was required to pay his daily living expenses. Mr. Morrison was aware at the time of hire that weather at times might prevent him from performing his work as a heavy equipment operator and the claimant had not expected to be paid per diem by the company. Mr. Morrison considered it to be in his best personal interest to seek other employment where he could have more hours of work available to him. Mr. Morrison had not secured new employment at the time that he left M. A. Mortenson Company however.

After Mr. Morrison left the M. A. Mortenson Company, he worked in insured work for two other construction companies and remains employed with a third construction company, at the time of hearing. As of the date of hearing, Mr. Morrison has reported earnings of \$4,265.00 for the benefits weeks ending February 17, 2018 through March 31, 2018.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-1 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.

Iowa Code § 96.5-1-g 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:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.25(13) 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:

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

In the case at hand, Mr. Morrison left his employment with the M. A. Mortenson Company due to general dissatisfaction with the pay that he was receiving. The M. A. Mortenson Company was paying Mr. Morrison at the union scale agreed upon however, due to reoccurring inclement weather and other procedural delays, the number of available hours to work each week had been reduced. Mr. Morrison concluded that his interest would be better served by finding new employment with a different company where more working hours were available. Work continued to be available to Mr. Morrison with the M. A. Mortenson Company at the time of his

leaving and there had been no change in the original agreement of hire. Mr. Morrison knew that he would not receive per diem pay and he knew that his hours as a heavy equipment operator could vary due to inclement weather, and other procedural delays at the work site.

Based upon the evidence in the record and the application of the appropriate law, the administrative law judge concludes that Mr. Morrison left his employment without good cause attributable to the employer. Accordingly, the claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

The administrative record reflects that Mr. Morrison has worked in and earned wages in insured work with other employers since leaving the M. A. Mortenson Company. Mr. Morrison's reported earnings after his separation from employment with the captioned company were in the amount of \$4,265.00 as of the date of this hearing matter. Because Mr. Morrison's reported earnings in insured work have not yet equaled ten times his weekly benefit amount of \$455.00 per week, he has not yet requalified for benefits as of this time.

DECISION:

The representative's decision dated March 2, 2018, reference 01 is affirmed. Claimant left work voluntarily on October 3, 2017, without good cause attributable to the employer. Mr. Morrison is disqualified for unemployment insurance benefits until such time as he has completed the requalification for benefits by earning ten times his weekly benefits amount in insured work and meets all the eligibility requirements of Iowa law.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn