

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TOM N MCGUIRE**  
Claimant

**MCANINCH CORP**  
Employer

**APPEAL 17A-UI-06376-JP-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/01/17**  
**Claimant: Appellant (4)**

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Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 16, 2017, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 10, 2017. Claimant participated. Employer participated through payroll administrator Ronda Wheeler.

**ISSUE:**

Did claimant voluntarily quit the employment with good cause attributable to employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an equipment operator from April 18, 2017, and was separated from employment on May 27, 2017, when he quit.

Claimant was on a temporary layoff from May 17, 2017 through May 27, 2017, because the employer did not have any work available for him due to weather. On May 27, 2017, claimant accepted an offer of employment with Rock Solid Stabilization, because he felt it was better hours and pay. On May 27, 2017, after claimant had accepted the offer of new employment, he told his supervisor he was quitting effective immediately. Claimant told his supervisor he was quitting because he had accepted other employment. Claimant started his new job with Rock Solid Stabilization on May 31, 2017 and is still employed with Rock Solid Stabilization. Claimant testified he was requesting benefits for the week ending May 27, 2017.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was temporarily laid off due to a lack of work for the one week period ending May 27, 2017, but then voluntarily left employment with MCANINCH CORP to accept employment elsewhere on May 27, 2017.

Iowa Code section 96.5(1) provides:

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.

Iowa Admin. Code r. 871-24.1(113)a provides:

**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.

Iowa Code section 96.5(1)a provides:

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.**

**24.28(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:

**Charging of benefits to employer accounts.**

**23.43(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.

Due to the weather conditions, the employer did not have any work available for claimant from May 17, 2017 through May 27, 2017 and the employer essentially placed him on a temporary layoff. Therefore, the temporary separation (layoff) was attributable to a lack of work by the employer. Benefits are allowed for the one week period ending May 27, 2017 and the employer's account is chargeable for the one week period ending May 27, 2017.

Claimant then quit his employment on May 27, 2017 to accept employment elsewhere and he did perform work for the new employer. Even though the separation was without good cause attributable to the employer (MCANINCH CORP) and would, standing alone, disqualify claimant from receiving benefits, claimant did leave in order to accept other employment and did perform services for the subsequent employer. Accordingly, benefits are allowed effective May 28, 2017 and the account of the employer (MCANINCH CORP, account number 004708-000) shall not be charged effective May 28, 2017.

**DECISION:**

The June 16, 2017, (reference 02) unemployment insurance decision is modified in favor of the appellant. Claimant was temporarily laid off due to a lack of work and is eligible for benefits for the one week ending May 27, 2017, so long as he is otherwise eligible. This employer's account is subject to charges for this time period. Thereafter, claimant voluntarily left the employment in order to accept other employment. Benefits are allowed, provided claimant is otherwise eligible. The account of the employer (account number 004708-000) shall not be charged effective May 28, 2017.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/rvs