

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ANDREW W RICE
1219 E EMMA AVE
DES MOINES IA 50315

HALL BROS INC
4850 MAPLE DR
PLEASANT HILL IA 50327-9208

Appeal Number: 04A-UI-06651-DT
OC: 05/16/04 R: 02
Claimant: Respondent (4)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 - Voluntary Quit
871 IAC 24.27 - Voluntary Quit of Part-time Job

STATEMENT OF THE CASE:

Hall Bros., Inc. (employer) appealed an unemployment insurance decision dated June 7, 2004, (reference 02), that concluded Andrew W. Rice (claimant) was eligible after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 14, 2004. The claimant participated in the hearing. Betty Rice appeared on the employer's behalf and presented testimony from two other witnesses, Jerry Gymer and Debbie Allen. Administrative notice is being taken of the Agency's wage records. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

FINDINGS OF FACT:

The claimant started working for the employer on April 22, 2003. He worked full time as a car detailer and lube technician in the employer's auto service center. His last day of full time work was February 28, 2004. He voluntarily ended his full time position effective that date in order to enter into full time employment with another employer. After February 28, the claimant sought and was given a part time position with the employer, approximately four to six hours per week, doing car detailing on an on-call basis. His last day of part time employment was April 2, 2004.

On April 2 the claimant arrived to do detailing on a car and discovered that two additional cars had been scheduled. He became upset that the additional cars had been scheduled, as he had not been advised and did not have time. After speaking with the president and part owner, Ms. Rice, the employer agreed to reschedule the two cars; one was going to be done on April 5 and one on April 6. The claimant subsequently remembered that he had a conflict on April 5 and informed an assistant manager he could not do the car that day, but he was aware he was supposed to do the car on April 6.

The claimant's message regarding not being able to do the car on April 5 did not get properly communicated, and on that date the employer was still expecting him to take care of the car. Mr. Gymer, the manager of auto service, attempted to contact the claimant on his cell phone. The claimant did not get the messages until after the business closed for the day. He made an attempt to contact Mr. Gymer at home, but was not successful and did not pursue his attempt. On April 6 he did not report to take care of the other car and did not return the calls from the previous day or additional calls that the employer made to the claimant on April 6 until mid-afternoon. At that time the claimant talked to Mr. Gymer and insisted on a meeting between himself, Ms. Rice, Mr. Gymer, and the assistant manager. Mr. Gymer agreed that a meeting should occur. The parties differ with regard to whether Mr. Gymer told the claimant that the claimant should call Ms. Rice and set up the meeting or whether Mr. Gymer told the claimant that he would set up the meeting and let the claimant know. Since each man believed the other was responsible for setting up the meeting, no one set up the meeting, and neither side contacted the other to inquire as to whether a meeting was going to happen. When nothing happened, the employer concluded that the claimant had decided not to return to his part time position, and the claimant assumed that the employer had decided that it did not want him to return.

The claimant filed a new claim for unemployment insurance benefits with an effective date of May 16, 2004. His base period was established as being from the first quarter of 2003 through the fourth quarter of 2003, all during the time the claimant was employed in his full time position with the employer. The claimant's highest quarter of earnings during his base period was the third quarter of 2003, which did not include any part time wages from the employer.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is disqualified from receiving unemployment insurance benefits because he voluntarily quit his employment; the matter is further complicated in that there are two separations that must be considered.

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.

As to the claimant's full time position, the claimant did voluntarily quit in order accept other employment. The claimant is not disqualified from receiving benefits as a result of this quit in the event of a future separation from his new employment, but the employer's account will not be charged for benefits paid based on his full time employment.

871 IAC 24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

Where an individual mistakenly believes that he is discharged and discontinues reporting to work, but was never told he was discharged, the separation is considered a voluntary quit without good cause attributable to the employer. Therefore, the claimant voluntarily quit his part time position without good cause attributable to the employer. Since, however, the job was part time, and the claimant has sufficient base period wages to qualify to receive unemployment insurance benefits, benefits are allowed, if the claimant is otherwise eligible. The employer's account will not be subject to charge for benefits paid to the claimant.

DECISION:

The unemployment insurance decision dated June 7, 2004 (reference 02), is modified in favor of the employer. The claimant is not disqualified and the employer's account is not subject to charge because the claimant first voluntarily quit full time employment to accept new employment and subsequently voluntarily quit part time employment without good cause attributable to the employer. Benefits are allowed, if the claimant is otherwise eligible.

ld/s