

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

JERRY R PRITCHARD
14369 S 31 HWY
MILO IA 50166

MCANINCH CORPORATION
PO BOX 1486
DES MOINES IA 50305

Appeal Number: 04A-UI-08025-BT
OC: 01/04/04 R: 02
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Jerry Pritchard (claimant) appealed an unemployment insurance decision dated July 15, 2004, reference 01, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with McAninch Corporation (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 16, 2004. The claimant participated in the hearing. The employer participated through Dave Spitz, Controller, and Kim Lamb, Payroll Administrator.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time equipment operator from April 18, 1994 through June 21, 2004. Equipment operators, unlike other employees under the union contract, are not paid per diem when they go out of town to work. During the last two years, the employer offered the claimant work in Missouri, and when the claimant accepted the work initially, it was close enough that he could drive home at night. The weather had been bad this year and the claimant was not able to work as many hours. Because he had to pay for his motel himself and was not able to work, he determined he could no longer afford to work out of town. The claimant spoke with his supervisor indicating he could not work in Missouri because he could not afford it, and the supervisor told the claimant there were no other options. He quit his job due to detrimental working conditions.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer or if the employer discharged him for work-connected misconduct. Iowa Code Sections 96.5-1 and 96.5-2-a.

Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). Although the claimant denies he had the intent to quit his employment, he was also aware that his actions would result in his discharge. Only an employee's objective actions can be evaluated when determining whether the intent to quit exists. Consequently, the claimant's separation is classified as a voluntary quit.

The claimant has the burden of proving that the voluntary quit was for a good reason that would not disqualify him. Iowa Code Section 96.6-2. He quit his employment because he could no longer afford to work out of state because he was not receiving enough hours. Unlike other employees, the operators are not paid per diem when working out of town and all additional living expenses had to be covered by the claimant. Due to poor weather, which was not within anyone's control, the claimant had not been working many hours in Missouri and, therefore, could no longer afford to stay there. It is not reasonable for an employer to expect an individual to continue working out of town under those circumstances regardless of what the union contract states. Consequently, the administrative law judge concludes the claimant has demonstrated his leaving was attributable to detrimental working conditions. Benefits are allowed.

DECISION:

The unemployment insurance decision dated July 15, 2004, reference 01, is reversed. The claimant voluntarily quit his employment with good cause attributable to the employer and is qualified to receive unemployment insurance benefits, provided he is otherwise eligible.

sdb/tjc