

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KEVIN D ROBERTS**  
Claimant

**APPEAL NO. 08A-UI-00920-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SALEM MANAGEMENT INC**  
**ADVENTURE STAFFIGN & PROF SVCS**  
Employer

**OC: 12/09/07 R: 01**  
**Claimant: Appellant (4)**

Iowa Code section 96.5(1)(a) – Voluntary Quit to Accept Other Employment  
871 IAC 26.8(5) – Decision on the Record

**STATEMENT OF THE CASE:**

Kevin Roberts filed a timely appeal from the January 15, 2007, reference 04, decision that denied benefits. After due notice was issued, a hearing was to be held on February 11, 2008. Mr. Roberts did not respond to the hearing notice instructions to provide a telephone number for the hearing. Cyd Hall, Office Manager, represented the employer. Based on the claimant's failure to appear, the law, and the contents of the Administrative file, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Decision on the record.

**FINDINGS OF FACT:**

The parties were properly notified of the scheduled hearing on this appeal. The appellant, Kevin Roberts, did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. The appellant did not request a postponement of the hearing as required by the hearing notice. Mr. Roberts' hearing notice had not been returned to the Appeals Section as undeliverable for any reason.

The administrative law judge has conducted a careful review of the administrative file to determine whether the unemployment insurance decision should be affirmed. The claimant did not participate in the fact-finding interview. The employer did participate in the fact-finding interview and provided information that indicated the claimant had voluntarily quit the employment to accept different employment and had in fact worked in the new employment.

**REASONING AND CONCLUSIONS OF LAW:**

871 IAC 26.8(3), (4) and (5) provide:

Withdrawals and postponements.

(3) If, due to emergency or other good cause, a party, having received due notice, is unable to attend a hearing or request postponement within the prescribed time, the presiding officer may, if no decision has been issued, reopen the record and, with notice to all parties, schedule another hearing. If a decision has been issued, the decision may be vacated upon the presiding officer's own motion or at the request of a party within 15 days after the mailing date of the decision and in the absence of an appeal to the employment appeal board of the department of inspections and appeals. If a decision is vacated, notice shall be given to all parties of a new hearing to be held and decided by another presiding officer. Once a decision has become final as provided by statute, the presiding officer has no jurisdiction to reopen the record or vacate the decision.

(4) A request to reopen a record or vacate a decision may be heard ex parte by the presiding officer. The granting or denial of such a request may be used as a grounds for appeal to the employment appeal board of the department of inspections and appeals upon the issuance of the presiding officer's final decision in the case.

(5) If good cause for postponement or reopening has not been shown, the presiding officer shall make a decision based upon whatever evidence is properly in the record.

The administrative law judge has carefully reviewed evidence in the record and concludes that the unemployment insurance decision previously entered in this case should be affirmed in part and modified in part.

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.

871 IAC 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.

871 IAC 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.

The information contained in the administrative file indicates the claimant voluntarily quit the employment without good cause attributable to the employer, but to accept other employment. The information contained in the administrative file further indicates that the claimant performed work for the new employer. The employer's account will not be charged for benefits paid to the claimant. The voluntary quit to accept new employment does not disqualify Mr. Roberts for unemployment insurance benefits. Mr. Roberts would be eligible for benefits, provided he was otherwise eligible.

Pursuant to 871 IAC 26.8(5), the appellant must make a written request to the administrative law judge that the hearing be reopened within 15 days after the mailing date of this decision. The written request should be mailed to the administrative law judge at the address listed at the beginning of this decision and must explain the emergency or other good cause that prevented the appellant from participating in the hearing at its scheduled time.

**DECISION:**

The Agency representative's January 15, 2007, reference 04, decision is modified as follows. The claimant voluntarily quit the employment without good cause attributable to the employer to accept new employment. The claimant performed work in the new employment. The employer's account will not be charged for benefits paid to the claimant. The claimant is eligible for benefits, provided he is otherwise eligible.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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