

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ROBERT C HALL
Claimant

APPEAL NO. 19A-UI-01335-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

M A MORTENSON CO
Employer

OC: 01/06/19
Claimant: Appellant (4)

Iowa Code Section 96.5(1)(a) – Voluntary Quit to Accept Other Employment

STATEMENT OF THE CASE:

Robert Hall filed a timely appeal from the February 7, 2019, reference 03, decision that held he was disqualified for benefits and the employer's account would not be charged for benefits, based on the deputy's conclusion that Mr. Hall voluntarily quit on October 1, 2018 without good cause attributable to the employer. After due notice was issued, a hearing was held on February 28, 2019. Mr. Hall participated. The employer did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Exhibits A and B were received into evidence.

ISSUE:

Whether the claimant's voluntary quit was for good cause attributable to the employer.

Whether the claimant voluntarily quit for the sole purpose of accepting other, better employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Robert Hall began his full-time employment with M. A. Mortenson Company on September 12, 2018 and last performed work for that employer on Thursday, September 27, 2018. The work involved clearing wind turbine towers and cleaning debris from the vicinity of the turbine towers. Mr. Hall's hometown is Lebanon, Illinois. The work Mr. Hall performed for M. A. Mortenson Company was located in rural areas near Stuart, Iowa. On September 11, 2018, Mr. Hall took up residence at the Economy Inn in Stuart. The lodging cost Mr. Hall \$315.00 per week. The work for M. A. Mortenson Company paid \$28.30 per hour. Mr. Hall's shift was usually 8.5 to 10.5 hours. The work schedule was subject to change in response to the weather. If the field surrounding a wind turbine tower was muddy, the employer's truck would get stuck and it would be more difficult or impossible to perform the cleaning work.

During the last week of the brief employment, the employer had 8.5 to 10.5 hours of work for Mr. Hall on Monday through Thursday, September 24-27, 2018. The employer did not have work for Mr. Hall on Friday, September 28, 2018 due to rainy weather. The employer instructed

Mr. Hall to “sit tight” until the weather improved and the work could recommence. Mr. Hall was concerned about the cost of his temporary lodging and the prospect of going without work due to the weather. On Saturday, September 29, Mr. Hall checked out of the motel and returned home to Lebanon, Illinois.

Though Mr. Hall returned to Illinois, he kept in contact with M. A. Mortenson Company regarding whether the employer had work for him. Until October 17, 2018, the employer did not have additional work. While Mr. Hall was back home in Lebanon, Illinois, he looked for work through his local union hall. Mr. Hall hoped to find work closer to Lebanon. While Mr. Hall was in Lebanon, he got married. On October 17, 2018, Mr. Hall accepted employment with a new employer. On that same day, M. A. Mortenson Company contacted Mr. Hall to advise that the company once again had work for him. On October 17, Mr. Hall notified the M. A. Mortenson Company representative that he was going to commence employment with the new employer rather than return to work with M. A. Mortenson Company.

Mr. Hall subsequently established an Iowa combined wage claim that was effective January 6, 2019.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)a 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:

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.

(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:

(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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The weight of the evidence in the record establishes that Mr. Hall was temporarily laid off effective September 28, 2018, when M. A. Mortenson Company temporarily did not have work for Mr. Hall due to inclement weather that hindered the company's work. On October 17, 2018, Mr. Hall elected to voluntarily quit the employment with M. A. Mortenson Company to accept other, better employment that he started the same day. The new employment was better insofar as it was closer to Mr. Hall's permanent residence and family and was not subject to the weather. Because the quit was without good cause attributable to M. A. Mortenson Company, that employer's account shall not be charged for benefits paid to Mr. Hall. Benefits shall instead be charged to the unemployment compensation fund. Because the quit was to accept other, better employment the quit does not disqualify Mr. Hall for unemployment insurance benefits. Mr. Hall is eligible for benefits provided he meets all other eligibility requirements.

DECISION:

The February 7, 2019, reference 03, decision is modified as follows. The claimant voluntarily quit the employment on October 17, 2018 without good cause attributable to the employer, but to accept other, better employment. The claimant is eligible for benefits provided he meets all other eligibility requirements. The employer's account shall not be charged for benefit. Benefits shall instead be charged to the unemployment compensation fund.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs