

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

DANNY J FYFE
Claimant

APPEAL NO. 18A-UI-10315-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALLIED BUILDING PRODUCTIONS CORP
Employer

OC: 12/17/17
Claimant: Appellant (4)

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

STATEMENT OF THE CASE:

Danny Fyfe filed a timely appeal from the October 4, 2018, reference 03, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the Benefits Bureau deputy's conclusion that Mr. Fyfe voluntarily quit on May 7, 2018 without good cause attributable to the employer. After due notice was issued, a hearing was held on October 30, 2018. Mr. Fyfe participated. Heath Galvin represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 18A-UI-10316-JTT. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant.

ISSUES:

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

Whether Mr. Fyfe voluntarily quit to accept other employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Danny Fyfe was employed by Allied Building Products Corporation as a full-time commercial truck driver from March 12, 2018 until May 8, 2018, when he voluntarily quit to accept other full-time employment. On May 7, 2018, Mr. Fyfe accepted an offer of full-time commercial truck driving employment from a former employer, H & H. Mr. Fyfe had worked for H & H immediately prior to his employment with Allied. The Allied employment paid \$20.00 per hour. The Allied work hours were 7:00 a.m. to 4:30 p.m., Monday through Friday. The Allied work duties involved delivering exterior building products to sites in the Des Moines metropolitan area. Mr. Fyfe has at all relevant times resided six miles from Winterset. During the Allied employment, Mr. Fyfe commuted from his home near Winterset to the Allied workplace in Des Moines. The H & H employment paid \$18.00 per hour, but only involved a six-mile commute from Mr. Fyfe's home to where the H & H truck was parked in Winterset. The H & H work was also less physically taxing than the Allied Work. In making his decision to leave the Allied employment, Mr. Fyfe considered the lifting involved in that work. Mr. Fyfe did notify Allied that he was leaving that employment. After Mr. Fyfe was absent without notice on May 6, 7 and 8, 2018, Allied deemed

him to have resigned from the employment pursuant to the employer's no-call/no-show policy. Shortly after Mr. Fyfe separated from the Allied employment, he commenced working for H & H.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Code section 96.5(1)(a) provides as follows:

Causes for disqualification.

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.

- (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.

The evidence in the record establishes that Mr. Fyfe voluntarily quit the employment with Allied Building Products Corporation for the sole purpose of accepting other employment that was better for him due to the shorter commute and the less physically taxing nature of the employment. The quit was without good cause attributable to Allied. Accordingly, that employer's account shall not be charged for benefits. Because the quit from Allied was based on acceptance of other employment, the quit from Allied does not disqualify Mr. Fyfe for unemployment insurance benefits. Mr. Fyfe is eligible for benefits, provided he is otherwise eligible.

DECISION:

The October 4, 2018, reference 03, decision is modified as follows. The claimant voluntarily quit the employment on May 7, 2018 without good cause attributable to the employer and for the sole purpose of accepting other employment. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs