

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICK L ALEXANDER
Claimant

APPEAL NO. 17A-UI-09928-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ARCHER-DANIELS-MIDLAND CO
Employer

OC: 08/27/17
Claimant: Respondent (4)

Iowa Code section 96.5(1) – Voluntary Quit

Iowa Administrative Code rule 871-24.25(38) – Discharge During Quit Notice Period

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 21, 2017, reference 02, decision. That decision disqualified the claimant for benefits effective September 24, 2017 and relieved the employer's account of liability of benefits for the period beginning September 24, 2017, based on the claims deputy's conclusion that the claimant voluntarily quit the employment effective September 22, 2017, without good cause attributable to the employer. The decision also allowed benefits to the claimant during the four-week period of August 27, 2017 through September 23, 2017 provided he was otherwise eligible, and held the employer's account could be charged for benefits paid for those four weeks, based on the claims deputy's conclusion that the employer discharged the claimant prior to the effective date of his quit. After due notice was issued, a hearing was held on October 13, 2017. Claimant Rick Alexander participated. John O'Donnell represented the employer and presented additional testimony through Paul Ashmore and Brandi Henry. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

ISSUE:

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

Whether the claimant was overpaid benefits.

Whether the claimant is required to repay benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Rick Alexander was employed by Archer-Daniels-Midland Company (ADM) as a full-time Operations Technician in the maintenance department at the ADM Des Moines oil refinery. Mr. Alexander began the employment in 2014 and last performed work for the employer on August 25, 2017. Paul Ashmore, Maintenance Supervisor, was Mr. Alexander's supervisor. John O'Donnell is the Refinery Manager. On August 21, 2017, Mr. Alexander submitted a written resignation memo that indicated he was quitting the employment and that his last day in the employment would be September 15, 2017. That date corresponded to the last day of a refinery shut-down period, a period during which the maintenance staff would be busy. Mr. Alexander had decided to leave the employment to move to Pennsylvania. Mr. Alexander had not accepted other employment at the time he submitted his resignation. Mr. Alexander had initially indicated on the resignation memo that September 25, 2017 would be his final day, but corrected the memo to provide September 15, 2017 as the final day. Mr. Alexander told the employer that he wanted his final day to correspond with the end of the shut-down period.

After the employer received Mr. Alexander's written resignation, Mr. O'Donnell decided not to allow Mr. Alexander to work through the notice period to the September 15, 2017 effective quit date. Mr. O'Donnell ended the employment on Friday, August 25, 2017. Mr. O'Donnell asserts that a safety concern prompted his decision to end the employment early, but there was no bona fide safety concern. Instead, Mr. O'Donnell decided to end the employment early as a form of disciplining Mr. Alexander for taking August 17 and 18, 2017 off without permission. Mr. Alexander had taken those days off for a trip to Pennsylvania despite the employer's denial of the time off request. The employer's attendance policy calls for discharge of an employee once an employee reaches seven attendance occurrence points. Mr. Alexander had four or five attendance points at the time Mr. O'Donnell elected to end the employment early.

Mr. Alexander established an original claim for unemployment insurance benefits that was effective August 27, 2017. Iowa Workforce Development set Mr. Alexander's weekly benefit amount at \$455.00. Mr. Alexander received weekly benefits for the three-week period of August 27, 2017 through September 16, 2017. Workforce Development records indicate that the Agency has tentative approved benefits for the week of September 17-23, 2017, but has not yet paid benefits for that week. ADM is the sole base period employer

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-1 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.

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 Admin. Code r. 871-24.25(2) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(2) The claimant moved to a different locality.

Iowa Admin. Code r. 871-24.25(38) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

The evidence in the record establishes a voluntary quit without good cause attributable to the employer that was effective September 15, 2017. The disqualifying quit was based on Mr. Alexander's decision to relocate to another state. The evidence also establishes that the employer elected to discharge Mr. Alexander on August 25, 2017, rather than allow him to continue to work through the end of the notice period. Because the employer elected to end the employment early, Mr. Alexander is eligible for the \$1,365.00 in benefits he received for the three-week period of August 27, 2017 through September 16, 2017, provided he meets all other eligibility requirements. Because the employer elected to end the employment early, the employer's account may be charged for the \$1,365.00 in benefits paid to Mr. Alexander for that three-week period. Effective September 17, 2017, Mr. Alexander is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Alexander must meet all other eligibility requirements. The employer's account is relieved of liability for benefits for the period beginning September 17, 2017.

Because there has been no overpayment of benefits, the administrative law judge need not further address that issue. See Iowa Code section 96.3(7) (regarding overpayment and recovery).

DECISION:

The September 21, 2017, reference 02, decision is modified as follows. The claimant voluntary quit without good cause attributable to the employer effective September 15, 2017. Because the employer elected to end the employment on August 25, 2017, the claimant is eligible for the \$1,365.00 in benefits he received for the three-week period of August 27, 2017 through September 16, 2017, provided he meets all other eligibility requirements and the employer's account may be charged for those benefits. Effective September 17, 2017, the claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account is relieved of liability for benefits for the period beginning September 17, 2017.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn