

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

STEVEN W SHOEMAKER
Claimant

MCANINCH CORP
Employer

APPEAL NO. 22A-UI-03902-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/12/21
Claimant: Appellant (1)**

Iowa Code Section 96.5(1)(c) – Voluntary Quit

STATEMENT OF THE CASE:

On February 1, 2022, Steven Shoemaker (claimant) filed a timely appeal from the January 24, 2022 (reference 01) decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on October 1, 2021 without good cause attributable to the employer. After due notice was issued, a hearing was held on March 14, 2022. Claimant participated. Ronda Wheeler represented the employer.

ISSUES:

Whether the claimant was laid off, was discharged for misconduct in connection with the employment, or voluntary quit without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:
The claimant, Steven Shoemaker, was employed by McAninch Corporation as a full-time equipment operator. The claimant began the employment in 2017 and last performed work for the employer on October 1, 2021. The claimant obtained the work through a union local hiring hall. The outside work was weather dependent. The employer's season generally runs from April to December.

On October 1, 2021, the claimant notified his supervisor that he needed to go off work for an extended period to help care for his wife, who was then sick with an unknown illness. The claimant also cited other personal concerns. The claimant wished to spend more time with his family, included his mother who had just turned 80. The claimant's wife's illness turned out to be pregnancy-related morning sickness. At the time the claimant went off work, he did not provide an anticipated return-to-work date. At the time the claimant went off work, the employer advised the claimant that the employer could not hold the particular position, but that the claimant was welcome to return at some later point when his personal circumstances allowed.

The claimant's primary and permanent residence is in Missouri. The McAninch employment was in Iowa. The claimant maintained a second residence in Des Moines. The claimant's wife remained at the couple's primary home in Missouri. When the claimant went off work effective

October 1, 2021, the claimant returned to the couple's home in Missouri. The claimant obtained new employment through a union local hiring hall and commenced the new employment on October 7, 2021. The claimant continued in the new employment until October 27, 2021.

On November 18, 2021, a doctor confirmed that the claimant's wife was pregnant.

On November 19, 2021, the claimant notified his supervisor at McAninch Corporation that his wife was pregnant. The claimant shared a sonogram and stated he was concerned about insurance. The claimant asked that McAninch provide him with work hours. The claimant's supervisor said he would speak with his superior and get back in touch with the claimant. On December 2, 2021, the claimant again contacted the employer to renew his request to return to the employment.

On December 15, 2021, the claimant again contacted the employer to request reinstatement. The claimant's supervisor advised the claimant that the seasonal layoff was about to take effect on December 17, 2021. The claimant's supervisor told the claimant that the employer would not be inclined to pull the person who had replaced the claimant from his position in order to provide work for the claimant. The employer elected not to have the claimant return to the employment just before the employer was getting ready for the seasonal layoff. The claimant understood that the employer sometimes found other work for employees to perform during would otherwise be the seasonable layoff period. The employer is still within its traditional shutdown period. The employer has not allowed the claimant to return to the employment.

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.

When a claimant leaves employment to move to a different locality, the claimant is presumed to have voluntarily quit without good cause attributable to the employer. Iowa Admin. Code r. 871-24.25 (2).

Iowa Code section 96.5(1)(c) 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:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

The evidence in the record establishes an October 1, 2021 voluntary quit without good cause attributable to the employer. Leaving employment for an indefinite period with no agreed upon return to work date is a quit, rather than a leave of absence. The weight of the evidence indicates that the claimant's wife's health circumstances were the primary reason for the claimant's departure, but there were others that included the claimant's desire to be closer to home and desire to spend time with his family. The claimant desired to relocate to his primary residence in Missouri for the multiple reasons. The claimant's decision to commence new employment on October 7, 2021 undermines the notion that it was necessary for the claimant to be at home to care for his spouse beyond October 6, 2021. The claimant elected to accept the new Missouri employment, rather than to return to McAninch in a timely manner to offer his services. In any event, the claimant's decision to accept the new employment in Missouri, while away from the McAninch employment, excludes him from the Iowa Code section 96.5(1)(c) exception to disqualification. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The January 24, 2022 (reference 01) decision is affirmed. The claimant voluntarily quit the employment on October 1, 2021 without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.



James E. Timberland
Administrative Law Judge

March 28, 2022
Decision Dated and Mailed

jet/jh