

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SCOTT E MILLHOUSE
Claimant

APPEAL NO. 22A-UI-03727-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWICK CABLE CONTRACTORS INC
Employer

**OC: 01/10/21
Claimant: Appellant (4)**

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

STATEMENT OF THE CASE:

On January 25, 2022, Scott Millhouse (claimant) filed a timely appeal from the January 21, 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 December 10, 2021 without good cause attributable to the employer. After due notice was issued, a hearing was held on March 11, 2022. Claimant participated. Terry Swick represented the employer. Exhibit A, the online appeal, was received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBIN, DBIN and WAGE-A.

ISSUES:

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

Whether the claimant voluntarily quit for the sole purpose of accepting other and/or better employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by Swick Cable Contractors, Inc. as a full-time laborer and last performed work for the employer on or about December 3, 2021. On December 6, 2021, the claimant notified the employer that he was quitting the employment in two weeks, by which the claimant meant his last day would be Monday, December 20, 2021. The employer's office administrator understood the claimant to mean his last day would be Friday, December 17, 2021.

The claimant has been in casual conversation with a prospective new employer, Midwest Underground Contractors, Inc. On December 9, 2021, the claimant accepted an offer of employment from Midwest. The claimant planned to start the new employment at the end of his notice period. During the first week of the notice period, work was called off due to weather and the claimant took some time off for medical appointments. On Sunday, December 12, 2021,

Terry Swick, President, notified Mr. Millhouse the employer would not need him the following week due to expected inclement weather and due to the employers desire to wrap up the claimant's payroll entries prior to the holiday. The claimant then moved up his start date with Midwest to Tuesday, December 14, 2021 and commenced working for the new employer at that time. The new employer offered a higher wage, the opportunity to do preferred work, and similar benefits, with a reduced health insurance premium.

The claimant had established an original claim for benefits that was effective January 10, 2021. After the claimant began his new employment with Midwest, he established an "additional claim" that was effective January 2, 2021. When the 2021 benefit year expired effective January 8, 2022, the claimant established a new benefit year that was effective January 9, 2022. Swick Cable Contractors, Inc. is a base period employer. Midwest Underground Contractors, Inc. is not a base period employer.

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. 871-24.25(38) provides as follows:

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 claimant voluntarily quit the employment without good cause attributable to the employer. The separation was effective December 12, 2021. The claimant quit the employment for the sole purpose of accepting other, better employment. The claimant is eligible for benefits, provided he is otherwise eligible. Swick Cable Contractors' employer's account will not be charged. Benefits relating to wage credits earned with Swick Cable Contractors shall be charged to the unemployment compensation fund.

DECISION:

The January 21, 2022 (reference 01) decision is MODIFIED in favor of the claimant/appellant as follows. The claimant voluntarily quit the employment without good cause attributable to the employer. The separation was effective December 12, 2021. The claimant quit the employment for the sole purpose of accepting other, better employment. The claimant is eligible for benefits, provided he is otherwise eligible. Swick Cable Contractors' employer's account will not be charged. Benefits relating to wage credits earned with Swick Cable Contractors shall be charged to the unemployment compensation fund.



James E. Timberland
Administrative Law Judge

March 25, 2022
Decision Dated and Mailed

jet/scn