

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LYNN KLUNDER
Claimant

APPEAL NO. 11A-UI-11380-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEARS MANUFACTURING CO
Employer

OC: 07-10-11
Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 19, 2011, reference 01, decision that allowed benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on September 22, 2011. The claimant submitted a written statement in lieu of participation. Trisha Taylor, human resources manager, and Dina Smith, employer representative, participated in the hearing on behalf of the employer. Employer's Exhibit One and Claimant's Exhibit A were admitted into evidence.

ISSUE:

The issue is whether the claimant voluntarily left his employment with 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 was employed as a full-time assembler for Sears Manufacturing Company from August 16, 2010 to July 8, 2011, when he voluntarily quit. At the time of hire, he was assigned to a stapler position and experienced wrist pain shortly thereafter. The claimant told the supervisor about his wrist pain and the supervisor provided him with wrist splints. He continued to experience pain but tried to work through it and eventually bid into another position. Another employee bumped the claimant out of his new position and he went back to the stapler position in late June 2011. He went to the company doctor July 5, 2011, and the doctor placed him on light duty. The doctor released the claimant to return to regular duty July 8, 2011, and indicated his wrist injury was not work-related. The claimant voluntarily quit his employment July 8, 2011. He said he could not perform the job because it hurt his wrist and would not change his mind even after the employer tried to get him to give the job a chance and was willing to move him to another position had that one not worked for him.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

Iowa Code section 96.5-1 provides:

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.

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. 871 IAC 24.25. The claimant voluntarily quit his employment on July 8, 2011 due to a non-work related medical injury even though he had been released to return to work without restrictions. A voluntary quit based on illness is clearly disqualifying except upon the advice of a licensed and practicing physician. Taylor v. Iowa Department of Job Service, 362 N.W.2d 534 (Iowa 1985). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer as defined by Iowa law. He has not met that burden. Therefore, benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The August 19, 2011, reference 01, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw