

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADAM F BARCUS
Claimant

APPEAL NO: 11A-UI-14756-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 10/09/11

Claimant: Respondent (2/R)

Section 96.5-1 – Voluntary Leaving
871 IAC 24.22(2)j – Leave of Absence
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Menard, Inc. (employer) appealed a representative's November 3, 2011 decision (reference 01) that concluded Adam F. Barcus (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 7, 2011. The claimant received the hearing notice and responded by calling the Appeals Section on November 23, 2011. He indicated that he would be available at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge called that number at the scheduled time for the hearing, the claimant was not available; therefore, he did not participate in the hearing. Paul Hammell, in-house attorney, appeared on the employer's behalf and presented testimony from two witnesses, Joel Ehrig and Laura Carstens. During the hearing, Employer's Exhibits One through Six were entered into evidence. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on February 11, 2011. He worked part time in sales in the plumbing department of the employer's Sioux City, Iowa store. His routine schedule was to work 5:00 to close on Mondays, Tuesdays, and Thursdays, and every other weekend. His last day of work was June 9, 2011.

On June 9 the claimant was issued orders from the state National Guard that he was to report for duty from June 15 through August 15. He submitted and the employer approved a leave of absence from his employment to cover this period. He understood that upon completion of his

duty he was to report back to the employer and complete paperwork to return to his employment.

When the employer had not heard from the claimant in the several days beginning August 16, the claimant's immediate supervisor, Carstens, called the claimant on or about August 22. She did reach him; he indicated he had completed his duty, but preferred not to come back to work until after the following weekend. It was then agreed between the claimant and Carstens that he would return to work on his regular schedule at 5:00 p.m. on August 29.

On August 29 the claimant was a no-call, no-show for work. Carstens called him that evening and left a message for him. He returned the call to Carstens on the morning of August 30. He indicated that he had misunderstood about being scheduled to work the prior evening, but agreed that he would be at work as scheduled at 5:00 p.m. that afternoon. He further confirmed that he had the necessary release from service paperwork ready to turn in to human resources upon his return that afternoon. However, the claimant was a no-call, no-show for work for his shift that afternoon.

The employer attempted several more times to call the claimant, but was unable to reach him directly; he did not return messages left for him by the employer. When the claimant had not reported for work and had not recontacted the employer by September 7, the employer considered the claimant to have voluntarily quit by job abandonment.

The claimant established a claim for unemployment insurance benefits effective October 9, 2011. The claimant has received unemployment insurance benefits after the separation.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. A voluntary quit is a termination of employment initiated by the employee – where the employee has instigated the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has instigated the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A mutually agreed-upon leave of absence is deemed a period of voluntary unemployment. 871 IAC 24.22(2)j. However, if the end of the leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits, and conversely, if at the end of the leave of absence the employee fails to return at the end of the leave of absence and subsequently becomes unemployed the employee is considered as having voluntarily quit and therefore is ineligible for benefits. Id.

Here, the claimant failed to return at the end of the leave of absence, and is therefore deemed to have voluntarily quit the employment. Further, the intent to quit can be inferred in certain circumstances; for example, failing to report and perform duties as assigned is considered to be a voluntary quit. 871 IAC 24.25(27). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The claimant has not satisfied his burden. While the employment was part time, Agency records indicate that without the wages from the employer

the claimant does not have sufficient wages from other employers to qualify to receive unemployment insurance benefits. 871 IAC 24.27. 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 § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's November 3, 2011 decision (reference 01) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of August 29, 2011, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs