

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NATHANIEL LEE
Claimant

APPEAL NO. 15A-UI-04454-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADECCO USA INC
Employer

OC: 03/01/15
Claimant: Respondent (2)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 3, 2015, reference 02, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged, based on an Agency conclusion that the claimant had voluntarily quit due to a work-related medical condition.. After due notice was issued, a hearing was held on May 11, 2015. Claimant Nathaniel Lee did not respond to the hearing notice instructions to provide a number for the hearing and did not participate. Thomas Kuiper of Equifax represented the employer and presented testimony through Todd Sebben. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One and Two into evidence. 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.

Mr. Lee contacted the Appeals Section at 10:30 a.m. on May 11, 2015 with regard to the hearing set for 8:00 a.m. that day. Mr. Lee indicated he was on hold for about 30 minutes, which would indicate that Mr. Lee initiated the contact at about 10:00 a.m. for the 8:00 a.m. hearing. Mr. Lee acknowledged that he had received timely notice of the hearing, had noted the date and time of the hearing, but had disregarded the instructions to provide a telephone number for the hearing. Mr. Lee indicated that he assumed the Iowa hearing would be handled the same as an Illinois hearing and that there would be no need for him to provide his number in response to the hearing notice. Mr. Lee's failure to provide a number for the hearing pursuant to the hearing notice instructions does not provide good cause to reopen the hearing record. See Iowa Administrative Code rule 871-26.14(7)(c) (Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record).

ISSUES:

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: Adecco USA, Inc., is a temporary employment agency. Nathaniel Lee performed work for the employer in two temporary work assignments. The first full-time, temporary assignment started on March 5, 2014 and ended on March 28, 2014 as a result of Mr. Lee suffering a lower back injury in connection with the assignment. Mr. Lee's injury was treated as a worker's compensation matter. A doctor restricted Mr. Lee to lifting no more than 10 pounds and pushing/pulling no more than 20 pounds. In light of the medical restrictions, the employer provided Mr. Lee with a full-time, light-duty assignment in the employer's office. The duties included computer training, light dusting, and assisting with a traffic count. The work was within Mr. Lee's medical restrictions. On May 6, 2014, Mr. Lee left after only five minutes and cited back pain as his reason for needing to leave. On May 8 and 14, 2014, Mr. Lee was absent without notifying the employer. On May 15, 2014, Mr. Lee submitted written notice as follows: "Until I can get some relief of my pain I am unable to perform any job duties for future correspondence you can contact Attorney John Westenee of Vanderbilt Law Firm." Mr. Lee had not asked for additional accommodation prior to quitting the employment. The employer continued to have work for Mr. Lee in the light-duty assignment at the time Mr. Lee voluntarily quit.

Mr. Lee established a claim for benefits that was effective March 1, 2015. Mr. Lee received \$762.00 in benefits for the six-week period of March 1, 2015 through April 11, 2015. Adecco USA is a base period employer. On April 1, 2015, a Workforce Development claims deputy held a fact-finding interview to address Mr. Lee's separation from Adecco USA. Cayse Lazier, Equifax Unemployment Insurance Claims Specialist, represented the employer. Ms. Lazier provided a brief oral statement: "The claimant quit after being reassigned to light duty on the main office and, after accepting the new contract, the claimant stated he was quitting due to back pain." The employer had provided a brief narrative in its electronic protest that indicated the claimant had resigned and thereafter failed to maintain contact with the employer. The protest also included a start date and end date for the employment. The employer had also provided a copy of a Mandatory Contact Notice, but did not provide a copy of the claimant's resignation memo.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered

to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Workforce Development rule 817 IAC 24.26(6) provides as follows:

Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job. In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

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.

The claimant has the burden of proving that his voluntary quit was for good cause attributable to the employer. See Iowa Code section 96.6(2). Mr. Lee did not participate in the appeal hearing and presented no evidence to support the notation that it was necessary for him to leave the employment due to the work related medical condition, or that prior to quitting he requested accommodations that the employer refused to provide. The weight of the evidence indicates that Mr. Lee voluntarily quit for personal reasons and without good cause attributable to the employer. The employer had provided Mr. Lee with light-duty work that complied with his medical restrictions. Continuing light-duty work was available. Because Mr. Lee voluntarily quit the employment without good cause attributable to the employer, he is disqualified for benefits until 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 unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial

decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3-7-a, -b.

Iowa Administrative Code rule 817 IAC 24.10(1) defines employer participation in fact-finding interviews as follows:

Employer and employer representative participation in fact-finding interviews.

24.10(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid \$762.00 in benefits for the six-week period of March 1, 2015 through April 11, 2015. The Equifax representative's statement plus the additional documentation provided by the employer was sufficient, though barely, to constitute participation in the fact-finding interview. The employer asserted through the oral and written statements that the claimant had voluntarily quit due to back pain. That bare-bones statement accurately described what had occurred and was sufficient to establish a voluntary quit without good cause attributable to the employer absent rebuttal.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

DECISION:

The April 3, 2015, reference 02, decision is reversed. The claimant voluntarily quit the employment, effective May 15, 2014 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 ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall be relieved of liability for benefits, including liability for benefits already paid. The claimant was overpaid \$762.00 in benefits for the six-week period of March 1, 2015 through April 11, 2015. The claimant must repay the benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css