

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN K GAMBLIN
Claimant

APPEAL NO. 11A-UI-10330-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 07/03/11
Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit
871 IAC 24.25(35) – Non-Job Related Injury
871 IAC 24.25(4) – Absent without Notice
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed a department decision dated July 28, 2011, reference 01, that held claimant recovered from an illness or injury on June 15, 2011 and when he recovered with an offer to return to work, no work was available. Benefits were allowed. A telephone hearing was scheduled for and held on October 10, 2011. The claimant did not participate. Dan Gerovack, department manager, participated for the employer. Employer Exhibits 1 through 7 were received as evidence.

ISSUES:

Whether the claimant voluntarily quit with good cause attributable to the employer.

Whether claimant was overpaid benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: The claimant worked for the employer as a team member associate from February 21, 2011 to June 15. He left work due to a non-job-related injury. The employer instructed him to stay in touch with information regarding his return to work with a doctor's release.

The employer did not hear from the claimant and it made multiple attempts to contact him. After two weeks with no communication, claimant was considered to have abandoned his job on June 29. The following day claimant contacted the employer about a return to work. He had not seen any doctor for his injury and he did not have a release to return to work.

Claimant was not available at the phone number of record. He has received benefits on his unemployment claim.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.25(35) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

871 IAC 24.25(4) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The administrative law judge concludes that the claimant voluntarily quit employment without good cause attributable to the employer on June 29, 2011 due to a non-job related injury that resulted in job abandonment.

Claimant left employment on June 15 due to a non-job related injury with an instruction to stay in touch and provide the employer with medical documentation when he was released to come back. When the employer gave him a two-week period, which is a reasonable length of time, to communicate his continuing absence and he failed to do so, he was considered to have abandoned his job. The next day claimant did contact the employer, but he had not seen any doctor and did not have a release to return to work.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Since claimant has received benefits on his claim, the overpayment issue is remanded to Claims for an overpayment decision.

DECISION:

The department decision dated July 28, 2011, reference 01, is reversed. The claimant voluntarily quit without good cause attributable to the employer on June 29, 2011. Benefits are denied until 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 overpayment issue is remanded to Claims.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw