

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEARA J BROCK
Claimant

APPEAL NO. 08A-UI-10554-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRAND FX BODY CO
Employer

**OC: 09/28/08 R: 01
Claimant: Respondent (2-R)**

Section 96.5(1) – Voluntary Quit
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Brand FX Body Company filed an appeal from a representative's decision dated November 6, 2008, reference 02, which held that no disqualification would be imposed regarding Keara Brock's separation from employment. After due notice was issued, a hearing was held by telephone on November 25, 2008. Ms. Brock participated personally. The employer participated by Janiece Runge, Human Resources Administrator, and Linda Houston, Human Resources Representative. Exhibits One, Two, and Three were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Brock was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Brock was employed by Brand FX Body Company from August 26 until September 25, 2008 as a full-time laborer in the assembly area. She was presumed to have quit when she stopped reporting for work without notice.

Ms. Brock's last day at work was September 18. As of that date, she could only perform light-duty work because of a work-related injury. She was assigned work performing inventory. She was not at work on September 19 because she had requested in advance to have the day off. She was next scheduled to work on September 22.

Ms. Brock left a voice message on September 22 indicating she would be absent. The employer tried to call her that day but got no answer. She did not call on September 23 or September 24. On September 24, the employer received a fax from Ms. Brock's physical therapist indicating she had work restrictions. The document, Exhibit Three, did not indicate that she could not work, only that she had limitations on the types of activities she could

perform. She was undergoing physical therapy three days each week for one hour each session. It was anticipated she would have therapy for two weeks.

The employer called Ms. Brock on September 24 and she indicated that the physical therapy report concerned a personal injury. She did not call on September 25. She came in on September 26 to get her paycheck and asked if she still had a job. She was told she did not.

Ms. Brock filed a claim for job insurance benefits effective September 28, 2008. She has received a total of \$1,788.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

The parties disagree as to whether Ms. Brock's separation was a quit or a discharge. The administrative law judge concludes from all of the evidence that she initiated the separation when she stopped reporting for available work. Her contention that she was fired on September 23 because she was unable to perform her job was not found credible. The employer was already providing her with light-duty work as a result of her work injury. It seems unlikely the employer would discharge her due to work limitations if it was already providing light-duty work. Furthermore, the employer did not receive the therapist's report until September 24.

The administrative law judge has also considered the fact that Ms. Brock was not off work on a doctor's recommendation as of September 22. The physical therapist's report does not indicate she had to remain off work while undergoing therapy. The administrative law judge presumes the report was intended for Ms. Brock's employer, as the therapist would not need to write a "to whom it may concern" note if he was merely advising Ms. Brock of her limitations. The limitations noted in the report appear to refer to work-related activities. Moreover, Ms. Brock was only having therapy for three hours each week. The administrative law judge has considered Ms. Brock's intention to remain off work for two weeks without a doctor's recommendation in order to have therapy for three hours each week. Based on the factors stated herein, the administrative law judge concludes that Ms. Brock intended to leave her employment. Because the separation was initiated by Ms. Brock, it is considered a voluntary quit.

An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). The evidence of record does not establish any good cause attributable to the employer for Ms. Brock's quit. Although she had medical restrictions, there is no evidence the employer would not have accommodated the restrictions. Since the evidence does not establish any good cause attributable to the employer, benefits are denied.

Ms. Brock has received benefits since filing her claim. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If an overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. Benefits will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if Ms. Brock will be required to repay benefits already received.

DECISION:

The representative's decision dated November 6, 2008, reference 02, is hereby reversed. Ms. Brock quit her employment for no good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. This matter is remanded to Claims to determine the amount of any overpayment and whether Ms. Brock will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw