

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD T BARRY
Claimant

APPEAL NO. 12A-UI-05445-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FLEXSTEEL INDUSTRIES INC
Employer

**OC: 04/17/11
Claimant: Respondent (4)**

Iowa Code Section 96.5(5)(a)(2) – Workers’ Compensation Benefits Fully Deductible
Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 3, 2012, reference 02, decision that allowed benefits based on an agency conclusion that the claimant had voluntarily quit for good cause attributable to the employer on March 25, 2012. After due notice was issued, a hearing was held on June 1, 2012. Claimant Richard Barry participated. Donna Backes, Human Resources/Payroll Supervisor, represented the employer. The parties waived formal notice on the issue of whether the claimant received workers’ compensation benefits that were deductible from his unemployment insurance benefits. Exhibits One and Two were received into evidence. The administrative law judge took official notice of the agency’s administrative record of benefits disbursed to the claimant.

ISSUES:

Whether the claimant received workers’ compensation benefits for temporary disability that are deductible from the claimant’s unemployment insurance benefit eligibility. He did.

Whether the claimant separated from the employment on March 25, 2012. He did not.

Whether the claimant was able to work and available for work during the week that ended March 31, 2012. He was not.

Whether the claimant was overpaid unemployment insurance benefits for the week that ended March 31, 2012. He was.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Richard Barry is employed by Flexsteel Industries, Inc. on a full-time basis. Mr. Barry started working for the employer in 1999. On May 5, 2011, Mr. Barry went off work in connection with a workplace injury. The employer treated the matter as a workers’ compensation matter. Mr. Barry was released by a doctor to return to work on March 30, 2012. Mr. Barry was on an approved leave

of absence between May 5, 2011 and his March 30, 2012 release date. Mr. Barry recommenced full-time employment with the employer on April 4, 2012, as soon as a supervisor indicated there was work available for Mr. Barry.

Mr. Barry had established an additional claim for unemployment insurance benefits that was effective March 25, 2012. Mr. Barry claimed only one week of unemployment insurance benefits and discontinued his claim after the week that ended March 31, 2012. Mr. Barry's weekly unemployment insurance benefit amount was set at \$293.00. That amount, less income taxes was disbursed to Mr. Barry via debit card on April 13, 2012 for the week that ended March 31, 2012.

Mr. Barry received workers' compensation benefits in connection with his May 5, 2011 injury. These included \$344.22 in total temporary disability benefits (TTD) disbursed to Mr. Barry on March 26, 2012 for the week of March 25-31, 2012.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

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 weight of the evidence establishes that Mr. Barry had been attached to the employment at Flexsteel Industries even while he was off work due to his injury and did *not* separate from the employer on March 25, 2012. Accordingly, the May 3, 2012, reference 02 decision, which found a separation and called it a quit, was entered in error.

Iowa Code section 96.5(5)(a)(2) provides that a claimant is disqualified for unemployment for unemployment insurance benefits for any week with respect to which the claimant is receiving or has received compensation for workers' compensation benefits for *temporary* disability.

Iowa Administrative Code rule 871 IAC 24.13(3)(d) interprets the disqualification language in the statute to mean not a total disqualification for benefits, but a dollar-for-dollar deduction of the workers' compensation benefits for temporary disability from unemployment insurance benefits, as follows:

24.13(3) Fully deductible payments from benefits. The following payments are considered as wages; however, such payments are fully deductible from benefits on a dollar-for-dollar basis:

d. Workers' compensation, temporary disability only. The payment shall be fully deductible with respect to the week in which the individual is entitled to the workers' compensation for temporary disability, and not to the week in which such payment is paid.

The weight of the evidence indicates that Mr. Barry received workers' compensation benefits for temporary total disability (TTD) in the amount of \$344.22 for the week that ended March 31, 2012. For that same week, Mr. Barry received \$293.00 in unemployment insurance benefits. The TTD workers' compensation benefits were deductible from Mr. Barry's unemployment insurance benefit eligibility. Because the TTD workers' compensation benefits exceeded Mr. Barry's weekly unemployment insurance benefit amount, Mr. Barry's eligibility for unemployment insurance benefit eligibility for the week that ended March 31, 2012 was reduced to zero.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(1)a, (2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical

ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The weight of the evidence indicates that during the week of March 25-31, 2012—the only week under consideration—Mr. Barry was off work due to injury, under the care of a physician, and was not released to return to work until Friday, March 30, 2012. Mr. Barry did not meet the work ability and availability requirements and, for this second reason also, was not eligible for benefits for the week that ended March 31, 2012.

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.

Because Mr. Barry was not eligible for the \$293.00 in unemployment insurance benefits he received for the week that ended March 31, 2012, that amount constitutes an overpayment of benefits that Mr. Barry must repay to Iowa Workforce Development.

DECISION:

The Agency representative's May 3, 2012, reference 02 decision is modified as follows. The claimant did not separate from the employment on March 25, 2012. For the week that ended March 31, 2012, the claimant received workers' compensation benefits that were deductible from his unemployment insurance benefit eligibility and that reduced his unemployment insurance benefit eligibility for the week to zero. The claimant was not able and available for work for the week that ended March 31, 2012. The claimant was overpaid \$293.00 in benefits for the week that ended March 31, 2012 and must repay that amount.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs