

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MATTHEW R BAKER**  
Claimant

**APPEAL NO. 13A-UI-11764-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**A & B WELDING INC**  
Employer

**OC: 09/22/13**  
**Claimant: Respondent (5)**

871 IAC 24.1(113) – Layoff

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 16, 2013, reference 01, decision that allowed benefits and that held the employer's account could be charged for benefits. After due notice was issued, a hearing was held on November 13, 2013. Claimant Matthew Baker did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Tanya Hengesteg, Office Manager, represented the employer. Exhibits One and Two were received into evidence. The administrative law judge took official notice of the agency's administrative record (DBRO) that indicates no benefits have been paid to the claimant in connection with the September 2013 claim.

**ISSUE:**

Whether Mr. Baker separated from the employment for a reason that disqualifies him for unemployment insurance benefits or that relieves the employer of liability for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Matthew Baker was employed by A & B Welding, Inc., as a full-time welder from October 2012 and last performed work for the employer on February 28, 2013. Mr. Baker's regular duties involved traveling around Iowa and surrounding states to perform welding on industrial storage tanks. The work required that Mr. Baker be able to lift 50 pounds.

On December 3, 2012, Mr. Baker suffered a shoulder injury in the course of performing work for the employer. The injury ultimately resulted in Mr. Baker undergoing surgery on March 11, 2013 to address the injury. The employer treated the matter as a worker's compensation matter. The medical evaluation and treatment Mr. Baker received was provided by medical providers selected by the employer or its worker's compensation insurance carrier.

At the end of March 2013, Mr. Baker was released to return to work with a five to ten pound lifting restriction. At that time, Mr. Baker contacted the employer about returning to work, but the employer did not have work. The only work the employer had that could accommodate Mr. Baker's lifting restriction was work in a local shop. However, the employer had recently

hired another employee to work in the shop and did not make the shop work available to Mr. Baker. Mr. Baker continued off work in connection with the work injury and the worker's compensation claim.

In May 2013, Mr. Baker contacted the employer and advised that he thought he was about to be released without restrictions. The employer advised Mr. Baker that he would need to provide a medical release before he would be allowed to return to work. The employer further advised that the only work the employer would have available to Mr. Baker was the work he had performed before the December 3, 2012, injury. Mr. Baker told the employer he would prefer to work in the local shop because his girlfriend was about to give birth. Mr. Baker was not in fact released to return to work without restrictions. Also in May 2013, Mr. Baker notified the employer that he had not been released to return to work without restrictions and had instead been referred for physical therapy. Mr. Baker continued off work in connection with the work injury and the worker's compensation claim.

On September 24, 2013, Mr. Baker was released to return to work without restrictions. On that day, Mr. Baker contacted the employer to arrange his return to work. At that time the employer advised Mr. Baker that he was no longer an employee. The employer told Mr. Baker that due to the length of the absence, the employer had terminated the employment. The employer cited a policy that employees would be deemed to have separated from the employment if they were away from the employment longer than eight weeks. The employer did not take into consideration that the basis for Mr. Baker's absence was the December 2012 work injury and the employer refusal, in March and May 2013, to make work available would accommodate Mr. Baker's work restrictions. In September, the employer told Mr. Baker that his only option was to reapply.

The employer now cites absences between the December 2012 injury and March 8, 2013 as additional justification for ending the employment. The employer indicates there were times during that period when the employer had work available that would accommodate the work restrictions, but that Mr. Baker did not make himself available for the work. However, the employer took no steps to separate Mr. Baker from the employment in connection with those absences.

Mr. Baker established a claim for unemployment insurance benefits that was effective September 22, 2013. Mr. Baker has not made weekly reports to Workforce Development to continue the claim and has not received any benefits in connection with the claim.

## **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.

A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period. 871 IAC 24.22(2)(j). If at the end of a period of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits. 871 IAC 24.22(2)(j)(1). On the other hand, if the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits. 871 IAC 24.22(j)(2).

The weight of the evidence establishes that Mr. Baker was on an approved, worker-injury and worker's compensation related leave of absences from March 11, 2013 until September 24, 2013, at which time he was released to return to work without restrictions. The weight of the evidence establishes that during that same period, the employer refused to make any work available for Mr. Baker other than the regular duties he could not perform in light of his work injury and associated medical restrictions. On the very day Mr. Baker was released to return to work without restrictions, he contacted the employer to arrange for his return to work and the employer refused to make work available for him. Mr. Baker was laid off effective September 24, 2013. Mr. Baker is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

The employer's belated assertion of unexcused absences during the period of December 2012 through March 8, 2013 does not concern any current acts. Accordingly, those alleged absences cannot serve as a basis for disqualifying Mr. Baker for benefits and warrant no further consideration. The termination of employment must be based on a current act. See 871 IAC 24.32(8).

**DECISION:**

The agency representative's October 16, 2013, reference 01, decision is modified as follows. The claimant was laid off effective September 24, 2013 when the employer failed to allow him to return to work after an approved leave of absence. The claimant is eligible for benefits provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/css