

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVE F BROWN
Claimant

APPEAL NO. 10A-UI-11965-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CNH AMERICA LLC
Employer

OC: 07-11-10
Claimant: Respondent (2R)

Iowa Code § 96.5(1)d – Voluntary Leaving/Illness or Injury
871 IAC 24.25(35) – Separation Due to Illness or Injury
Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 18, 2010, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on October 13, 2010. The claimant did participate and was represented by Nicolas Pothitakis, Attorney at Law. The employer did participate through Jim Grikschat, Human Resources Representative.

ISSUES:

Was the claimant suspended due to job-related misconduct or did he ask for a leave of absence?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a weld production full time beginning May 15, 2006 through date of hearing as he remains employed.

The claimant was initially discharged on July 13, 2010 for failing to inform the employer of his absence. Later the employer learned that the claimant had informed them through his request for short-term disability benefits that was made on July 7, 2010 due to a non-work-related knee injury. In August when the employer learned of the mistake, the claimant was reinstated with benefits as of August 2, 2010. The claimant last worked for the employer on July 6, 2010.

While working for the employer up until July 6, the claimant was under restrictions to his left arm for a work-related injury. The employer accommodated any and all restrictions the claimant had due to his work-related arm injury. The employer does not automatically accommodate work restrictions due to non-work-related illness or injury. The claimant was not working after July 6 due to a non-work-related injury to his knee. The claimant has been given a medical leave of absence and is currently receiving short-term disability benefits from the employer due to his medical inability to work. When the claimant is able to return to work with either no work

restrictions or work restrictions the employer is willing to accommodate due to his knee injury, the employer will have work for him that will comply with his work-related restrictions due to the arm injury.

The claimant is still an employee of the employer, but is not working due to his non-work-related injury. On October 12, 2010 the claimant received work restrictions due to his knee injury from his physician. Those include wearing a knee brace, no standing for any longer than four hours, no lifting over forty pounds. At the time of the hearing, the claimant had not presented the work restrictions to the employer for their consideration.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is temporarily separated from his employment without good cause attributable to the employer.

Iowa Code § 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.

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 § 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 § 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 24.23(10) provides:

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

Claimant has not been released to return to full work duties and employer is not obligated to accommodate a non-work-related medical condition. The employer has been and will continue to accommodate all work-related restrictions. The claimant was not discharged, but asked for a leave of absence beginning on July 7, 2010, thus his absence from work was at his own request and unemployment benefits are not allowed during that period. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

Iowa Code § 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 the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if:

(1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3(7). In this case, the claimant has received benefits but was not eligible for those benefits.

REMAND: The matter of determining the amount of the potential overpayment and whether the overpayment should be recovered under Iowa Code § 96.3(7)b is remanded to the Agency.

DECISION:

The August 18, 2010 (reference 01) decision is reversed. Claimant's separation was without good cause attributable to the employer. Benefits are withheld until such time as claimant works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible or until such time as claimant obtains a full release without restriction (for his non-work-related knee injury) to return to regular duties, offers services to the employer, and the employer has no comparable, suitable work available.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css