IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

EDWARD L FINCH Claimant **TEREX USA LLC** Employer	**APPEAL 17R-UI-02959-H2T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 07/05/15** **Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 23, 2016, (reference 03) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing for appeal number 16A-UI-10428-B2T. A telephone hearing was held on October 7, 2016 before administrative law judge Blair Bennett. The claimant participated pro se. The employer participated through Angie Scribner and was represented by Steve Zaks, of Employer's Edge. No exhibits were entered into the record. Judge Bennett issued a decision for appeal number 16A-UI-10428-B2T on October 18, 2016 which denied the claimant unemployment insurance benefits. The clamant appealed to the Employment Appeal Board (EAB). In a decision dated November 17, 2016 in 16B-UI-10428 the EAB affirmed Judge Bennett's decision and denied benefits. The claimant retained counsel and appealed to the Iowa District Court. After the appeal was filed, the EAB's attorney moved for an order from the district court to remand the case for taking of additional evidence. On March 1, 2017 Judge Davenport remanded for an additional hearing.

Due notice was issued and an additional hearing was held by telephone conference call on May 2, 2017. The claimant participated and was represented by Bruce Toenjes, Attorney at Law. The employer originally indicated they were going to participate in the hearing, and submitted exhibits to be entered into the record at the hearing. Approximately ten minutes prior to the start time of the hearing, the employer's representative contacted the agency and indicated the employer was opting not to participate in the hearing. The hearing was held without the employer's participation. Exhibits submitted by the employer were entered and received into the record as Employer's Exhibits A. Claimant's Exhibits 1 through 3 were entered and received into the record.

ISSUE:

Did the claimant voluntarily quit his employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a welder beginning on July 12, 1988 through August, 21, 2015 when he voluntarily chose to quit by taking an early retirement package offered by the employer. If the claimant had chosen not to accept the retirement package he could have continued to work for the employer.

In July 2015 the employer identified forty-four employees to whom they wanted to offer a retirement package. Each employee, including the claimant, was given a specific offer that included a one-time payment into that employee's 401K plan. The claimant was not told by his employer that he had to take the offer or he would be let go or separated from his employment. The choice was entirely up to the claimant. While employees may have suspected that there was a layoff coming, as there had been layoffs in the past, there had been no announcement that the plant would close. The claimant was never told that he had to bump another employee in order to keep his job. The offer was simply if an employee chose to retire, that employee would be given a set payment to their individual 401K plan. The payment was not a severance payment. Twenty eight employees of the forty-four to whom the offer was made, including the claimant, chose to accept voluntary retirement package. The sixteen employees who chose not to accept the retirement package were allowed to continue working.

At an informational meeting held with employees who had been offered the retirement package; the employer provided a FAQ or fact sheet to employees that put them on notice that it was not up to the company to decide if the employee would receive unemployment insurance benefits. The employer did indicate they would not protest any claim for unemployment insurance benefits. A representative from Iowa Workforce Development (IWD) attended the meeting and provided incorrect information to employees. The IWD representative incorrectly told employees that if the employer did not protest their claims, the employees would be eligible for unemployment insurance benefits. Whether the employer does or does not protest the claim is not dispositive of the issue of entitlement to benefits. The information provided by the IWD representative influenced the claimant's decision to take the retirement package. However, the claimant also chose to accept the retirement offer because in November 2015 he would be eligible to begin drawing both social security benefits and his pension. The unemployment benefits were not the sole or primary factor that led to the claimant's decision to accept the early retirement offer.

The claimant filed a claim with an effective date of July 5, 2015. His claim was filed before the early retirement package was offered or discussed with him. He filed the claim due to a plant shut down during the Fourth of July holiday week. At the time he filed his initial claim, the claimant accurately reported the reason for his claim as a layoff due to lack of work. The layoff was for one week in July and one week in August, 2015. The claimant accurately reported his wages earned during the short-term layoff. After the claimant accepted the retirement package, neither he nor his employer notified the agency that he was no longer laid off due to lack of work, but had voluntarily separated from the company. IWD had no way of knowing the claimant had separated permanently from the employer. The claimant continued to claim weekly benefits and collected unemployment benefits throughout his claim year which expired July 3, 2016.

In November 2015, when the claimant began drawing his pension benefits, he notified IWD and his weekly benefit amount was reduced accordingly to account for his receipt of a pension funded totally by the employer. It is unclear why IWD did not investigate the claimant's separation from his employment at that time.

The claimant filed a new claim for benefits with an effective date of July 3, 2016 after his prior claim expired. When the claimant filed his new claim for benefits, IWD learned that the claimant was permanently separated from the employer. On September 23, 2016, over one year after his separation from the employer, the agency determined the claimant had voluntarily quit to retire on August 21, 2015 and was thus ineligible for unemployment insurance benefits from that date.

The employer's plant eventually closed in July 2016 and all employees were laid off at that time. At the time the claimant chose to take the early retirement offer in August 2015 neither he nor any other employee knew if the plant would close or be shut down in the future or if at all.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.25(24) 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:
>
> (24) The claimant left employment to accept retirement when such claimant could have continued working.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

The claimant had the choice to take the retirement package offered by the employer, or to continue working. The claimant simply chose for a number or reasons, to accept the early retirement offer. He could have continued to work if he had so chosen. The fact that a plant or employer may shut down or close at some undetermined point in the future is not a good cause reason for leaving employment that would make a claimant eligible for unemployment insurance benefits. While claimant's decision to quit may have been based upon good personal reasons it was not a good-cause reason attributable to the employer for leaving the employment. Benefits must be denied.

Unfortunately, the claimant was given incorrect information about his eligibility for unemployment insurance benefits by an IWD representative. Incorrect information given by an employee of IWD does not operate under the law to make an otherwise ineligible employee eligible for benefits. The claimant sought information from the agency on at least four occasions and was given so much conflicting inconsistent information that he gave up trying to figure out why he was given benefits for over a year, then found ineligible and overpaid. The claimant did not engage in any wrong doing to obtain the benefits. He was simply paid benefits due to agency error when he should not have been. The claimant may have relied on the incorrect advice in making his decision to accept the buyout, but even if it was his sole reason for accepting the buyout, that alone does not make him eligible for unemployment insurance benefits. The common law concept of 'detrimental reliance' does not apply in the statutory scheme of unemployment insurance benefits. If an IWD employee incorrectly tells an employee they are eligible for benefits, and that employee relies on that information to make weekly claims, the employee may still be found ineligible later and be required to repay any overpayment of benefits.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. 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 administrative law judge is certain that the claimant acted in good faith and was not at fault in his receipt of unemployment insurance benefits. However, he was not entitled to those benefits based on his separation on August 21, 2015 from this employer. The unemployment security law, Iowa Code Chapter 96, does not provide for the common law concept of detrimental reliance in order to sustain an award of unemployment insurance benefits.

Lastly, whether the employer did or did not protest the claim also has no bearing on the claimant's entitlement as the decision as to entitlement to benefits is made by the agency, not the employer.

871 IAC 24.19(3) provides:

Upon receiving a written request for review or, **on its own initiative** and on the basis of the facts as it may have in its possession or may acquire, the claims section may affirm, modify, or reverse the prior decision, or refer the claim to an administrative law judge. The claimant or any other party filing the request for review shall be promptly notified of the decision or referral. Unless the claimant or any other party files an appeal within ten days after the date of mailing, the latter decision shall be final and benefits shall be paid or denied in accordance therewith.

The rules does not require the agency establish any good cause reason for issuing a new decision nor does it limit the amount of time in which the agency has to issue the new decision. The rule set out above indicates that IWD does have authority on its own initiative to nullify and void a prior decision. By the same token, the agency is not limited by the passage of time from determining that a separation was disqualifying. Under these circumstances then it makes sense that even if a year has passed, the agency is not prohibited from adjudicating the claimant's separation.

The simple fact is that for some unknown reason it took IWD over a year to make a decision about the claimant's separation from this employer. While it is not clear why it took so long,

there is nothing in the statute or rules that limits the amount of time the agency has to adjudicate a separation. Thus, the claimant's separation is considered a voluntary quit without good cause attributable to the employer and benefits must be denied.

DECISION:

The September 23, 2016, (reference 03) decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Teresa K. Hillary
Administrative Law Judge

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Decision Dated and Mailed

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