

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ERIN M SHOUP**  
Claimant

**APPEAL NO. 14A-UI-05338-MT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BRIDGESTONE AMERICAS TIRE**  
Employer

**OC: 04/20/14  
Claimant: Respondent (2R)**

Iowa Code § 96.5-1 – Voluntary Quit

Iowa Code § 96.3-7 – Recovery of Overpayment of Benefits, Employer Chargeability for non participation at Fact Finding

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated May 15, 2014, reference 02, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on June 12, 2014. Claimant participated. Employer participated by Jim Funcheon, Division Human Resource Manager; Abbie Jones, Human Resource Section Manager and Chad Dowling, Area Business Manager.

**ISSUES:**

The issues in this matter are whether the claimant quit for good cause attributable to the employer, whether claimant is overpaid unemployment insurance benefits and whether employer's account is charged due to non participation at fact finding.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on March 31, 2014. Claimant went off work due to personal health issues. Employer told claimant to take as much time as he needed. Claimant was scheduled to return to work effective April 4. Claimant did not return to work nor did he call to report his absences for April 4, 5, 6, 9, 10, 14 and 15. Employer sent an emissary to claimant's house to tell him to report in on his work status. Claimant agreed to call but never did make a personal contact with the human resource section manager. Employer finally gave up on claimant and considered him to have quit effective April 15.

Employer did not participate at the fact-finding interview. Employer failed to participate at fact finding because of unknown reasons. Employer directed their representative to provide the name and telephone number of a witness. The information provided is sketchy and inconclusive.

There is no evidence that proves claimant received benefits due to fraud or willful misrepresentation.

## REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to the employer when claimant terminated the employment relationship because he did not keep employer informed of his availability for work. Claimant had a duty to tell employer his status when he went on a personal leave of absence. The personal visit to claimant's residence on April 11 was sufficient to inform claimant he needed to make a better effort at calling in. Claimant did not keep employer informed even after the personal visit. This is job abandonment. Benefits withheld.

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.

Iowa Admin. Code r. 871-24.25(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 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:

(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.

The next issue concerns an overpayment of unemployment insurance benefits and charges to employer's account.

Fraud or willful misrepresentation by the claimant means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment benefits. See 871 IAC 24.10(4).

Employer participation would include testimony from a firsthand witness or the name and number of a firsthand witness who may be contacted for rebuttal. It could also include a detailed written statement or documents that provide specific, factual information regarding the separation. At a minimum, the employer's information regarding a discharge must include the dates, particular circumstances and the act or omissions of the claimant. A voluntary separation should include the stated reason for the quit. See 871 IAC 24.10(1)

Statements or general conclusions without supporting detailed factual information and/or information submitted after the fact-finding interview are not considered participation within the meaning of the statute. See 871 IAC 24.10(1)

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The evidence presented at hearing was not sufficient to rule on the issue of employer's participation and overpayment waiver. This matter is remanded to the claims section for determination of claimant's overpayment, overpayment waiver and employer's liability for account charges.

**DECISION:**

The decision of the representative dated May 15, 2014, reference 02, is reversed and remanded for determination of claimant's overpayment, claimant's overpayment waiver, and employer's participation at fact finding and employer's account charges. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Marlon Mormann  
Administrative Law Judge

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Decision Dated and Mailed

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