

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRESA K BARTMAN
Claimant

APPEAL NO. 09A-UI-05099-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 02/22/09
Claimant: Respondent (2-R)

Section 96.5(1)d – Quit/Medical

STATEMENT OF THE CASE:

The employer, Menard, filed an appeal from a decision dated March 19, 2009, reference 01. The decision allowed benefits to the claimant, Tresa Bartman. After due notice was issued a hearing was held by telephone conference call on April 28, 2009. The claimant participated on her own behalf. The employer participated by Department Manager Bev Kohanek, Assistant Department Manager Kyle Klaisner and Assistant General Manager Robert Rankin.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Tresa Bartman was employed by Menard from September 30, 2008 until January 22, 2009 as a full-time warehouse worker. As she was driving home from work in the early hours of January 13, 2009, Ms. Bartman was in an auto accident. Later that day she called and notified Assistant Department Manager Kyle Klaisner she would not be in to work for her shift on January 13, 2009, and he told her she would need to provide a doctor's note. Someone brought a note in excusing her from work January 13 through 16, 2009, with a return to work date of January 19, 2009.

On January 19, 2009, Ms. Bartman again called Mr. Klaisner and said she would not be in to work because she believed she had sustained other injuries in the accident which had just made themselves felt. He again told her he needed a doctor's note and one was submitted excusing her from work on January 20 and 21, 2009, with no specific return to work date.

On January 22, 2009, Ms. Bartman again saw her doctor, this time for anxiety and sleeplessness. Counseling was recommended but no specific return to work date was given. When the claimant called Mr. Klaisner on that day she was not able to tell him when she could return to work because it would depend on the counseling. He informed her she had not worked for Menard long enough to have qualified for a leave of absence and told her she could reapply when her doctor released her.

Ms. Bartman has not been released to return to work by either her physician or her counselor, and has not contacted Menard to reapply for employment. She has declined to continue working for the employer because she is too anxious about the commute she would have to make.

Tresa Bartman has received unemployment benefits since filing a claim with an effective date of February 22, 2009.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

The claimant was injured in a non-work-related accident. Although she was released to return to work twice, she did not and instead sought further medical attention and extended her time off. The final doctor's opinion did not give her a specific return to work date but suggested counseling for an indefinite period of time until it could be determined when she was able to resume work duties.

Ms. Bartman has not been released to return to work and, even when that time comes, she will not seek employment from Menard due to the commute. The distance to the job is the same as it was when she was first hired and it is only the anxiety from the accident which makes the commute more onerous. While this is unfortunate, it does not constitute good cause attributable to the employer. The record establishes the claimant quit by not returning to work either when released by her doctor or to reapply for employment. She is disqualified.

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.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of March 19, 2009, reference 01, is reversed. Tresa Bartman is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs