

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WEISBROD, RICKY, L**  
Claimant

**APPEAL NO. 12A-UI-15264-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GKN ARMSTRONG WHEELS INC**  
Employer

**OC: 11/25/12**  
**Claimant: Respondent (2-R)**

Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the December 19, 2012, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on February 6, 2013. Claimant Ricky Weisbrod did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate in the hearing. Michelle Nicoson, Human Resources Manager, represented the employer and presented additional testimony through Peggy Taylor, Human Resources Generalist. Exhibits One and Two were received into evidence.

**ISSUE:**

Whether Mr. Weisbrod separated from the employment for a reason that disqualifies him for unemployment insurance benefits. The administrative law judge concludes that Mr. Weisbrod voluntarily quit without good cause attributable to the employer, effective February 16, 2012 by failing to return to the employment at the end of an approved leave of absence.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Ricky Weisbrod was employed by GKN Armstrong Wheels, Inc., as a full-time CNC machinist from July 2011 and last performed work for the employer on November 23, 2011. At that time, Mr. Weisbrod commenced an approved 12-week medical leave of absence that was based on a

back injury he had sustained away from work. The employer approved the 12-week medical leave of absence despite the fact that Mr. Weisbrod had not worked for the employer long enough to qualify for a medical leave of absence under the Family and Medical Leave Act.

Mr. Weisbrod also applied for and was initially approved for short-term disability benefits through the employer's third-party provider, Hartford Company. However, Mr. Weisbrod and his doctor did not respond to requests for additional information that Hartford Company had made on December 14 and 15, so Hartford Company closed the claim.

On January 4, 2012, Mr. Weisbrod provided the employer with a doctor's note that indicated he was unable to work for *two* additional weeks. The employer heard nothing further from Mr. Weisbrod after he submitted that note.

The 12-week medical leave of absence expired on February 16, 2012. On that date, Michelle Nicoson, Human Resources Manager, mailed a letter to Mr. Weisbrod. In the letter, Ms. Nicoson advised Mr. Weisbrod that his leave of absence had expired. Ms. Nicoson asked whether Mr. Weisbrod would be returning on February 20, 2012 or whether he would be able to return at some date certain in the future. Ms. Nicoson indicated that the employer was willing to provide accommodations, but could not do so without additional information from Mr. Weisbrod. Mr. Weisbrod did not respond to the employer's letter.

On February 27, 2012, Ms. Nicoson sent a second letter to Mr. Weisbrod. The letter indicated that since the employer had not heard from Mr. Weisbrod in response to the February 16 letter, the employer deemed the employment terminated. The employer heard nothing further from Mr. Weisbrod.

Mr. Weisbrod filed a claim for unemployment insurance benefits that was effective November 27, 2011. That was the week that followed the last day he performed work for the employer. Mr. Weisbrod received benefits in connection with that claim and then established a new claim for benefits that was effective November 25, 2012.

**REASONING AND CONCLUSIONS OF LAW:**

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. See 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. See 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 without good cause attributable to the employer and, therefore, is ineligible for benefits. See 871 IAC 24.22(j)(2).

Mr. Weisbrod failed to participate in the hearing and thereby failed to present any evidence to suggest an involuntary separation from the employment or a voluntary separation for good cause attributable to the employer. The evidence in the record indicates that Mr. Weisbrod was approved for a medical leave that expired on February 16, 2012. The evidence indicates that Mr. Weisbrod had provided the employer with medical documentation that only supported a medical leave through January 18, 2012. The evidence fails to establish a medical basis for Mr. Weisbrod's failure to return to the employment at the end of the approved leave of absence. The evidence indicates instead that Mr. Weisbrod simply failed to return to the employment at the end of the leave of absence. Based on the evidence in the record an application of the appropriate law, the administrative law judge concludes that Mr. Weisbrod voluntarily quit without good cause attributable to the employer effective February 16, 2012. Mr. Weisbrod is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits.

Iowa Code section 96.3(7) 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. The overpayment recovery law was updated

in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of the amount of the overpayment and whether the claimant will have to repay the overpaid benefits.

This matter will also be remanded to the Claims Division for determination of whether Mr. Weisbrod was able and available for work from the time he established the claim for unemployment insurance benefits that was effective *November 27, 2011*.

**DECISION:**

The Agency representatives December 19, 2012, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in a been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

This matter is remanded to the Claims Division for determination of the amount of the overpayment and whether the claimant will have to repay the overpaid benefits in connection with the benefit year that started *November 27, 2011*.

This matter is also remanded to the Claims Division for determination of whether the claimant was able and available for work from the time he established the claim for benefits that was effective *November 27, 2011*.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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