

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOSHUA W WILCOX
Claimant

QSC LLC
Employer

APPEAL NO. 24A-UI-03375-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/10/24
Claimant: Respondent (2R)

Iowa Code Section 96.5(1)(d) – Voluntary Quit
Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

On March 28, 2024, the employer filed a timely appeal from the March 26, 2024 (reference 01) decision that allowed benefits to the claimant, provided the claimant met all other eligibility requirements, and that held the employer's account could be charged, based on the IWD deputy's conclusion the claimant was discharged on August 31, 2023 for no disqualifying reason. After due notice was issued, a hearing was held on April 19, 2024. Joshua Wilcox (claimant) participated. Stephanie Johnson represented the employer. Exhibits 1, 2 and 3 were received into evidence. The administrative law judge took official notice of the following IWD administrative records: DBRO and KCCO. The administrative law judge took official notice of the fact-finding materials for the limited purpose of documenting the employer's participation in the fact-finding interview.

ISSUES:

Whether the claimant was laid off, was discharged for misconduct in connection with the employment, or voluntarily quit without good cause attributable to the employer.

Whether the claimant was overpaid benefits.

Whether the claimant must repay overpaid benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Joshua Wilcox (claimant) was employed by QSC, L.L.C. as a full-time diesel mechanic from 2016 and last performed work for the employer on April 14, 2023. Prior to the claimant's next scheduled work date, the claimant commenced an approved two-week absence. The claimant's doctor had taken the claimant off work due to pain in the claimant's neck and back. The claimant had not suffered an injury incident in connection with the employment. The claimant's absence and health condition did not give rise to a worker's compensation claim. The claimant provided a medical excuse to the employer for the initial two-week period.

The claimant's doctor subsequently extended the claimant's time off work to June 5, 2023. The claimant provided a medical excuse and the employer approved the absence. The claimant applied for leave under the Family and Medical Leave Act (FMLA) and the employer approved the FMLA application.

On June 5, 2023, the claimant notified the employer that his doctor had not released him to return to the employment and that his doctor had referred him to a surgeon for a surgical consult. The employer approved the continued absence from the workplace. The claimant applied for short-term disability benefits through the employer's third-party insurer. The employer supported the claimant's application for short-term disability benefits. From this point forward, the claimant's absence from the workplace was of indefinite duration.

The claimant exhausted his FMLA protected leave effective July 7, 2023. The claimant had not been released by his doctor to return to the employment and there was no indication whether or when the claimant might be released to return to the employment.

On August 25, 2023, the employer spoke with the claimant regarding his continued indefinite absence from the employment and the employer's intention to terminate the employment effective August 31, 2023. The parties mutually understood as of August 31, 2023 that the employment had terminated. The employer invited the claimant to contact the employer when the claimant was released to return to his full duties.

The claimant underwent three cervical spine fusions in September 2023 to address degenerative disc disease. The claimant understood that his many years as a diesel mechanic may have been a factor in his condition. The claimant understood from the surgeon that his recovery might take six months to a year or longer.

The claimant transitioned from short-term disability benefits to long-term disability benefits through the employer's third-party insurer.

The long-term disability provider terminated the long-term disability benefits effective March 8, 2024, in response to the surgeon notifying the insurer that the claimant had been released from care. The claimant had not heard directly from the surgeon that he was released from care. The claimant has not received documentation from the surgeon indicating that he has been released to work or that he has been released to return to performing full-time diesel mechanic duties.

The claimant established an original claim for unemployment insurance benefits that was effective March 10, 2024. The claim was in response to termination of the long-term disability benefits. The claimant has not returned to the employer to request to return to the employment. The claimant has not presented the employer with a medical release document indicating a doctor has released him to return to the employment. Rather, the claimant elected not to seek further employment with this employer. This employer is the sole base period employer in connection with the claim. The claimant has received \$3,492.00 in benefits for the six weeks between March 10, 2024 and April 20, 2024. The employer participated in the March 25, 2024 fact-finding interview that addressed the claimant's separation from the employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Administrative Code rule 87124.1(113) characterizes the different types of employment separations as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. **Layoffs.** A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. **Quits.** A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. **Discharge.** A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. **Other separations.** Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

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 Iowa Administrative Code rule 87124.25.

Iowa Code section 96.5(1)(d) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 Administrative Code rule 81724.26(6) provides as follows:

Separation because of illness, injury, or pregnancy.

a. **Nonemployment related separation.** The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

b. **Employment related separation.** The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the

employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

The Employment Appeal Board has analyzed at length the circumstances under which a medical condition based separation from employment will be deemed a voluntary leaving of the employment versus a discharge. See *Tompson and W.W. Transport, Inc.*, 22BUI18961 (2022) (available at <http://uidecisions.iowaworkforcedevelopment.gov/solr/ui-decisions/browse?q=22B-UI-18961>). The administrative law judge finds the EAB's in-depth analysis to be wise and persuasive guidance in deciding the present matter.

The evidence in the record establishes a disqualifying separation from the employment. The claimant voluntarily left the employment due to a health condition that was not attributable to this employment. While the claimant's absence began as a series of finite periods of approved absence, by June 5, 2023, the claimant's absence from the employment became indefinite in duration. The claimant's health-related absence continued to be of an indefinite duration at the time the claimant exhausted FMLA benefits effective July 7 2023 and when the employer notified the claimant on August 25, 2023 that the employer was terminating the employment effective August 31, 2023. The parties' characterization of the separation from employment as a discharge is not controlling. The claimant had in fact separated from the employment well before the employer took steps to formalize the separation in August 2023. A licensed and practicing physician has not certified that the claimant has recovered to the point where he is released to return to his full duties with the employer. The claimant has not returned to the employer with proof he has been released to return to his regular duties or to request to return the employment. Rather, the claimant has chosen not to seek further employment with the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements.

The administrative law judge must address the overpayment of benefits. Iowa Code section 96.3(7) provides in relevant part as follows:

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)

(a) 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. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers. If the department determines that an employer's failure to respond timely or adequately was due to insufficient notification from the department, the employer's account shall not be charged for the overpayment.

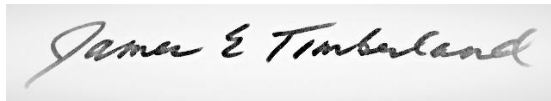
(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

The claimant received \$3,492.00 in benefits for the six weeks between March 10, 2024 and April 20, 2024, but this decision disqualifies the claimant for those benefits. The benefits are an overpayment. Because the employer participated in the fact-finding interview, the claimant must repay the overpaid benefits. The employer's account is relieved of charge for benefits, including benefits already paid.

DECISION:

The March 26, 2024 (reference 01) decision is REVERSED. The claimant voluntarily left the employment without good cause attributable to the employer. The claimant left the employment upon the advice of a licensed and practicing physician and due to a non-work related medical condition. A licensed and practicing physician has not certified that the claimant has recovered to the point where he is released to return to his full duties with the employer. The claimant has not returned to the employer with proof he has been released to return to his regular duties or to request to return the employment. The claimant elected not to seek further employment with the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. For purposes of determining a future "requalification" date, IWD should use July 7, 2023, the FMLA exhaustion date, as the effective separation date.

The claimant is overpaid \$3,492.00 in benefits for the six weeks between March 10, 2024 and April 20, 2024. The claimant must repay the overpaid benefits. The employer's account is relieved of charge for benefits, including benefits already paid.



James E. Timberland
Administrative Law Judge

April 29, 2024
Decision Dated and Mailed

JET/jkb

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.