

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

BARBARA VAUX
313 MINNEOPA AVE
OTTUMWA IA 52501

CARGILL MEAT SOLUTIONS CORP
c/o FRICK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166

Appeal Number: 06A-UI-07102-JTT
OC: 06/11/06 R: 03
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

871 IAC 24.1(113)(d) – Other Separations
Section 96.4(3) – Able and Available
Section 96.3(7) – Recovery of Overpayment

STATEMENT OF THE CASE:

Cargill Meat Solutions filed a timely appeal from the June 29, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 1, 2006. Human Resources Associate Ericka Bleck represented the employer. Claimant Barbara Vaux participated. Employer's Exhibit One and Claimant's Exhibit A were received into evidence. The administrative law judge took official notice of Agency's administrative file.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On November 18, 1996, Barbara Vaux commenced her full-time employment with Cargill Meat

Solutions. On March 28, 2005, Ms. Vaux last appeared and performed services for the employer. On March 23, 2005, Ms. Vaux was in a non-work-related auto accident and suffered injury to her back and neck. Ms. Vaux's position at Cargill required her to regularly lift and carry 30-pound product samples between work areas. Ms. Vaux attempted to return to the employment on March 28, 2005, but was in a great deal of pain. After her shift, Ms. Vaux met with her doctor. The doctor entered medical restrictions that prevented Ms. Vaux from returning to her normal duties. The employer was not willing to provide light-duty work. Ms. Vaux applied for and was approved for Family and Medical Leave and short-term disability benefits. At the time Ms. Vaux commenced her leave of absence, both sides understood that the timing of Ms. Vaux's return to the employment would hinge on her doctor's determination that she was able to perform her regular duties. The employer was not willing to allow Ms. Vaux to return to work without a full medical release. Ms. Vaux entered into an arrangement with the employer whereby Ms. Vaux continued to receive and pay for health insurance benefits and continued to keep the employer informed of her health status.

On June 7, 2006, Ms. Vaux's doctor changed the work restrictions from temporary to permanent in nature. Ms. Vaux's doctor had told her she would be unable to perform her previous duties. The medical restrictions included a 20-pound lifting restriction. The doctor also restricted Ms. Vaux from repetitive pushing, pulling, twisting, stooping, bending, kneeling, squatting and/or lifting.

On June 9, Ms. Vaux presented documentation of the permanent restrictions to the employer's human resources staff. The human resources staff had Ms. Vaux meet with a company nurse. The nurse confirmed with Ms. Vaux that the restrictions were now permanent. The nurse then instructed Ms. Vaux to clean out her locker and return her badge to the human resources department. Ms. Vaux asked the nurse for clarification of her employment status and the nurse said, "You're fired." Ms. Vaux then took her hardhat, employee badge, and insurance to the human resources staff. The human resources staff had Ms. Vaux sign a Termination Notice that indicated she was voluntarily terminating her employment effective June 9, 2006 due to permanent disability. Ms. Vaux advised the human resources staff that she had applied for Social Security Disability Insurance benefits and was in the process of appealing a decision denying benefits.

Ms. Vaux has been physically unable to work since commencing her leave of absence and continues to be physically unable to work. In addition, Ms. Vaux requires assistance with getting dressed. Ms. Vaux requires assistance with household chores, yard work, and shopping. Ms. Vaux cannot stand or sit in the same position for more than 15-20 minutes and continues to experience constant pain. Ms. Vaux continues on multiple prescription medications to address her pain. Ms. Vaux has not looked for work since establishing her claim for benefits.

Ms. Vaux has commenced college coursework towards becoming a certified public accountant, but expects she will require home-based employment after she obtains her degree. Prior to joining Cargill Meat Solutions, Ms. Vaux had worked for several years as a food server and restaurant manager.

Ms. Vaux established a claim for benefits that was effective on June 11, 2006 and has received benefits. On June 15, 2006, a Workforce Development representative entered the reference 02 decision that approved Ms. Vaux for "department-approved training" for the period of June 17-November 15, 2006.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge must decide the nature of the separation from the employment.

All terminations of employment are generally classifiable as layoffs, quits, discharges, or "other separations." See 871 IAC 24.1(113). 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. The evidence indicates there was a separation from the employment initiated by the employer in response to Ms. Vaux's permanent work restrictions. The separation from the employment on June 9, 2006, falls under the definition of "other separations," in that the separation was based on the employer's acceptance of the restrictions indicated on that date. See 871 IAC 24.1(113)(d). Accordingly, Ms. Vaux would be eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Vaux.

The administrative law judge will next address the question of whether Ms. Vaux has been *able* and *available* for work, as required by Iowa Code section 96.4(3), since establishing her claim for benefits. At the same time, the administrative law judge will address whether, or to what extent, Ms. Vaux is subject to the requirements imposed by Iowa Code section 96.4(3).

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(1)a, (2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical

ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

871 IAC 24.39 provides:

Department-approved training or retraining program. The intent of the department-approved training is to exempt the individual from the work search requirement for continued eligibility for benefits so individuals may pursue training that will upgrade necessary skills in order to return to the labor forces. In order to be eligible for department-approved training programs and to maintain continuing participation therein, the individual shall meet the following requirements:

(1) Any claimant for benefits who desires to receive benefits while attending school for training or retraining purposes shall make a written application to the department setting out the following:

- a. The educational establishment at which the claimant would receive training.
- b. The estimated time required for such training.
- c. The occupation which the training is allowing the claimant to maintain or pursue.

(2) A claimant may receive unemployment insurance while attending a training course approved by the department. While attending the approved training course, the claimant need not be available for work or actively seeking work. After completion of department-approved training the claimant must, in order to continue to be eligible for unemployment insurance, place no restriction on employability. The claimant must be able to work, available for work and be actively searching for work. In addition, the claimant may be subject to disqualification for any refusal of work without good cause after the claimant has completed the training.

(3) The claimant must show satisfactory attendance and progress in the training course and must demonstrate that such claimant has the necessary finances to complete the training to substantiate the expenditure of unemployment insurance funds.

This rule is intended to implement Iowa Code section 96.4(6).

The evidence in the record establishes that Ms. Vaux had not been *able* to work in some gainful employment since establishing her claim for benefits. Approval for department-approved

training exempts Ms. Vaux from the requirement that she make herself *available* for work or that she earnestly and actively engage in a search for work. However, approval for department-approved training does not exempt Ms. Vaux from the requirement that she be *able* to work. The administrative law judge concludes that Ms. Vaux is ineligible for benefits, effective June 11, 2006, because she has not been able to work in some gainful employment since establishing her claim for benefits. If Ms. Vaux becomes able to perform some gainful work, her eligibility for benefits would need to be reexamined.

Iowa Code section 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 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.

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.

Because Ms. Vaux has received benefits for which she had been deemed ineligible, those benefits constitute an overpayment that Ms. Vaux is required by law to repay to the Agency. Ms. Vaux is overpaid \$1,864.42.

DECISION:

The June 29, 2006, reference 01, is reversed. The claimant's separation from the employment was initiated by the employer, but falls under the category heading of "other separations." The claimant would be eligible for benefits, if she met all other eligibility requirements. However, the claimant is not eligible for benefits, effective June 11, 2006, because she has not been *able* to perform some gainful work since establishing her claim for benefits. The claimant is overpaid \$1,864.42.

jt/pjs