

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH K DONNELLY
Claimant

APPEAL NO: 10A-EUCU-01199-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION
Employer

OC: 05/02/10

Claimant: Respondent (2/R)

Section 96.5-1 – Voluntary Leaving
Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Qwest Corporation (employer) appealed a representative's December 14, 2010 decision (reference 02) that concluded Joseph K. Donnelly (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 2, 2011. The claimant participated in the hearing. Larry Lempel of Barnet Associates appeared on the employer's behalf and presented testimony from one witness, Kevin Bloesch. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 19, 2010. He worked full time as a consumer sales and service agent in the employer's Sioux City, Iowa call center. His last day of work was November 5, 2010.

The claimant called in sick from November 8 through November 16, due to difficulties with new medications for anxiety and depression. On November 16 the claimant's manager, Mr. Bloesch, discussed with the claimant the fact that he needed to try to return to work, and the claimant agreed he would try to return to work the next day. However, the claimant was a no-call, no-show for work beginning November 17.

Mr. Bloesch attempted to contact the claimant each day from November 17 through November 22, but was unable to reach the claimant. He left at least one message for the claimant, which the claimant did not return. When the employer was unsuccessful in reaching the claimant by November 22, Mr. Bloesch sent the claimant a letter indicating that he needed to

hear from the claimant by November 26, or the employer would assume that the claimant had abandoned his position.

The claimant did not call in after November 17 because when he felt he could not return to work on November 17 he assumed he would be discharged for missing so much work. However, Mr. Blossch had not indicated that if the claimant did not return by a set date, he would be discharged. The claimant was still suffering side effects of the medications until about early December, but even then he did not attempt to recontact the employer to explain his situation and seek to return to work, as he assumed he had been discharged.

The claimant established a claim for unemployment insurance benefits effective May 2, 2010. He reopened the claim by filing an additional claim effective November 21, 2010. The claimant has received unemployment insurance benefits after the separation.

REASONING AND CONCLUSIONS OF LAW:

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

The claimant asserts that his separation was not “voluntary” as he had not desired to end the employment; he argues that it was the employer’s action of telling him he needed to return to work which led to the separation and therefore the separation should be treated as a discharge for which the employer would bear the burden to establish it was for misconduct. Iowa Code § 96.6-2; 871 IAC 24.26(21). Rule 871 IAC 24.25 provides that, 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 rule further provides that there are some actions by an employee which are construed as being voluntary quit of the employment, such as where an employee ceases reporting for work because of a belief he has been or will be discharged, where the employer has not made such a decision or told the claimant he is or would be discharged. 871 IAC 24.25.

The claimant ceased reporting for or calling in for work because of his belief he was or would be discharged because of his absences, even though he had not been told that he would be discharged if he did not return; therefore, the separation is considered to be a voluntary quit. The claimant then has the burden of proving that the voluntary quit was for a good cause that would not disqualify. Iowa Code § 96.6-2. Where the quit is for medical or health reasons, the quit is disqualifying at least until the claimant has recovered and seeks to return to work unless the medical or health issue is attributable to the employer. Iowa Code § 96.5-1; 871 IAC 24.25(35); 871 IAC 24.26(6)b. The claimant was not instructed by his doctor to leave the employment, and he did not seek to return to the employer once he recovered. The claimant has not satisfied his burden. Benefits are denied.

The unemployment insurance law 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits

on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded to the Claims Section.

DECISION:

The representative's December 14, 2010 decision (reference 02) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of November 21, 2010, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs