

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFREY D MCCOY
Claimant

APPEAL NO. 12A-UI-00945-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 12/04/11
Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Menard, Inc. filed a timely appeal from a representative's decision dated January 18, 2012, reference 02, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was held on February 21, 2012. The claimant did not respond to the notice of hearing and did not participate. The employer participated by Mr. Noah Mayer, department manager, and Mr. Bob Rankin, assistant general manager. An additional witness, Mr. Craig Schroeder, did not testify.

ISSUE:

At issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Jeffrey McCoy was employed by Menard, Inc. from February 29, 2008, until October 6, 2011, when he quit his job. Mr. McCoy was last employed as a full-time supervisor in the company's cross dock department and was paid by the hour. His immediate supervisor was Noah Mayer.

Mr. McCoy left his employment by walking off the job on October 6, 2011, due to apparent dissatisfaction with the company's decision to promote another supervisor. Prior to leaving employment, the claimant did not complain that he would quit if the employer did not make certain accommodations or changes. The claimant was aware that he could go up the chain of command if dissatisfied with management decisions but did not do so.

The decision to promote another supervisor was made based upon qualifications and the ability to communicate instructions to subordinates. Prior to the claimant's leaving, Mr. McCoy was included in meetings. He continued to have a set schedule and duties were being fairly apportioned between and amongst supervisors. Work continued to be available to the claimant at the time that he chose to leave.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes the claimant left with good cause attributable to the employer. It does not.

Iowa Code section 96.5-1 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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. See Iowa Code section 96.6-2. An individual who voluntarily leaves their employment must first give notice to the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. See Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993).

In this matter, the evidence establishes the claimant had the ability to bring his complaints to the attention of upper management before leaving but did not do so. The claimant left employment by walking off the job and did not give a reason for leaving at that time. The employer concluded that Mr. McCoy may have been dissatisfied because another candidate for a promotion had been selected. The evidence in the record does not establish that the claimant was subjected to detrimental or intolerable working conditions, but that the claimant left due to personal dissatisfaction with a management decision to choose another candidate that was more qualified.

The test as to whether a person has been subjected to intolerable or detrimental working conditions is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 33 (Iowa 1988) and O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993).

As the evidence in the record does not establish that the claimant was subjected to intolerable or detrimental working conditions and establishes the claimant did not give prior notification to the employer of his dissatisfactions, the administrative law judge concludes the claimant has not sustained his burden of proof in establishing good cause for leaving attributable to the employer. Unemployment insurance benefits are withheld.

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 issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

DECISION:

The representative's decision dated January 18, 2012, reference 02, is reversed. The claimant quit employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until 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 issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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