

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CARL J FLESTER**

Claimant

**APPEAL NO. 12A-UI-14975-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MIDWEST HARD PARTS INC**

Employer

**OC: 11/18/12**

**Claimant: Respondent (2R)**

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 – Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer filed an appeal from a decision of a representative dated December 13, 2012, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on January 23, 2013. The claimant participated personally. The employer participated by Ed Mack, Owner. Mickey Miller and Troy Mack were witnesses for the employer. The record consists of the testimony of Eddie Mack; the testimony of Mickey Miller; the testimony of Troy Mack; and the testimony of Carl Flester.

**ISSUES:**

Whether the claimant was discharged for misconduct and

Whether the claimant has been overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer supplies transmission parts. The claimant was hired on July 18, 2011. He was a full-time general laborer. His last full day of work was October 15, 2012.

On October 16, 2012, the claimant came to work. He had left his phone at work and did not realize that the employer had left a message for him not to come to work that day. Since the claimant had a 30- mile drive to work. Ed Mack, the owner, told the claimant that he could stay and dismantle a transmission. Mr. Mack then left the room.

The claimant told Mickey Miller and Troy Mack that he was unable to do that work because of his back condition. He left the workplace and drove home. Mr. Mack was unaware that the claimant had left. When he found out the claimant was gone and what he had said about his back, he called the claimant. The claimant told Mr. Mack that he had three back injuries in

1995; 1996; and 1997. The claimant worked in a physically demanding job and Mr. Mack was concerned that the claimant had never told him about his back condition. He did have other lighter-duty jobs that the claimant had worked in the past. The claimant picked up his paycheck on Friday and was asked to come to work on the following Monday.

The claimant never returned to work. The employer was willing to give him work but the claimant made no effort to return to work.

## **REASONING AND CONCLUSIONS OF LAW:**

871 IAC 24.25(27) provides:

Voluntary quit without good cause. 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 employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(27) The claimant left rather than perform the assigned work as instructed.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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 claimant is not eligible for unemployment insurance benefits. The greater weight of the evidence is that the claimant was assigned work that he did not want to do because he felt that he could not do the work due to his back condition. The claimant did not tell the owner that he was leaving. He simply left. When asked to come back to work, the claimant failed to do so. There is no evidence that the employer terminated the claimant. Rather the employer was trying to find the claimant lighter work given his statements about his back. Mr. Mack testified that he had lighter-duty jobs that the claimant could do but the claimant made no effort to return to work for the employer.

The administrative law judge concludes that the claimant severed the employment relationship. He did not want to do a particular job that had been assigned to him and so he left. He did not respond to the employer's request that he return to work. The claimant may have had good personal reasons for not wanting to work for the employer any longer but none of these reasons are attributable to the employer. Benefits are denied.

The next issue is overpayment of benefits.

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 overpayment issue is remanded to the Claims Section for determination.

**DECISION:**

The decision of the representative dated December 13, 2012, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. The overpayment issue is remanded to the Claims Section for determination.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/css