

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

**JAMES E MYERS**

Claimant

**MESTEK MACHINERY INC**

Employer

**APPEAL 23A-UI-10168-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/24/23**

**Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Mestek Machinery Inc, the employer/appellant,<sup>1</sup> appealed the Iowa Workforce Development (IWD) October 16, 2023 (reference 01) unemployment insurance (UI) decision. IWD found Mr. Meyers eligible for REGULAR (state) UI benefits because IWD concluded Mr. Myers did not voluntarily quit; the employer dismissed him from work on September 30, 2023 for a reason that did not disqualify him from receiving UI benefits. On October 30, 2023 the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to the employer and Mr. Meyers for a telephone hearing scheduled for November 13, 2023.

The undersigned administrative law judge held a telephone hearing on November 13, 2023. The employer participated in the hearing through Amanda Thompson, human resources manager and Kurt Terwilliger, UTCA hearing representative. Mr. Meyers participated in the hearing personally. Russ Jaeger, business manager, Sheet Metal Worker's Union, participated as a witness for Mr. Myers. The undersigned rescheduled the hearing to give Mr. Myers a chance to access and review the employer's eighteen pages of documents. The parties agreed to a new hearing on November 16, 2023. On November 15, 2023, the DIAL, UI Appeals Bureau mailed a notice of hearing to the employer and Mr. Meyers for a telephone hearing scheduled for November 16, 2023.

The undersigned held a telephone hearing on November 16, 2023. The employer participated in the hearing through Amanda Thompson, human resources manager and Kurt Terwilliger, UTCA hearing representative. Mr. Meyers participated in the hearing personally. Russ Jaeger, business manager, Sheet Metal Worker's Union, participated as a witness for Mr. Myers. The undersigned took official notice of the administrative record and admitted Employer's Exhibit 1 as evidence.

**ISSUES:**

Did the employer discharge Mr. Myers from employment for disqualifying job-related misconduct, or did he voluntarily quit without good cause attributable to the employer?

Did IWD overpay Mr. Myers UI benefits?

If so, should he repay the benefits?

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<sup>1</sup> Appellant is the person or employer who appealed.

## **FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Myers began working for the employer in 1995. He worked as a full-time industrial electrician. His employment ended on September 28, 2023.

On September 12, the employer called Mr. Myers into the office and told him that he was being aggressive with four co-workers. Mr. Myers disagreed that he was being aggressive, and he did not like that the employer called him into the office. The employer later changed its wording from aggressive to gruff.

The following week, Mr. Myers took vacation leave for one-half day on Tuesday, September 19, and the full day Wednesday, September 20 through Friday, September 22. Mr. Myers had also requested to take vacation leave from Monday, September 25 through Friday, September 29. Mr. Myers' manager approved all of his leave requests.

The contract between the employer and the union, of which Mr. Myers is a member, requires an employee to give the employer a 30-day notice if the employee will be absent for four or more days. Ms. Thompson contacted Mr. Myers' manager and the manager denied Mr. Myers' leave request for Thursday, September 28 and Friday, September 29. Ms. Thompson also contacted Mr. Myers and reminded him of the 30-day notice requirement. Mr. Myers saw that he was now approved for leave only on Monday, September 25 through Wednesday, September 27.

A bit after 8:00 a.m. on September 27, Ms. Thompson spoke with Mr. Myers via telephone. Ms. Thompson reminded Mr. Myers of the 30-day notice requirement again and asked him if he would attend work the following day. Mr. Myers said he would have to see. A few hours later, Mr. Myers spoke with Mr. Jaeger and gave Mr. Jaeger a letter to give to the employer. The letter informed the employer that Mr. Myers' last day working for the employer would be Friday, October 13 as he would be retiring at that time. Mr. Myers intended to stop working for the employer, but not stop working altogether. Mr. Jaeger sent the letter to the employer just after noon on September 27. Ms. Thompson received the letter soon thereafter.

Mr. Myers did not attend work the following day. Instead, Mr. Myers submitted a request for personal leave. Mr. Myers received an email from the employer denying his request and telling him that he would receive a registered letter via mail the next day. The employer accepted Mr. Myers' resignation and decided to end Mr. Myers' job immediately instead of letting him work until October 13. The employer sent Mr. Myers a letter on September 28 ending his employment as of September 28.

IWD paid Mr. Myers REGULAR (state) UI benefits in the total gross amount of \$1,164.00 for 2 weeks between October 22, 2023 and November 11, 2023. The employer participated in the fact-finding interview.

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

For the reasons that follow, the undersigned concludes Mr. Myers' separation from employment was without good cause attributable to the employer.

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.

Iowa Admin. Code r. 871-24.25(37) 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:

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer.<sup>2</sup> A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention.<sup>3</sup> "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular.<sup>4</sup>

In this case, Mr. Myers gave the employer a resignation notice, and the employer accepted the notice. Mr. Myers used the word "retire" but he did not intend to stop working and remove himself from the workforce. He intended to stop working for the employer. This is a resignation and not a retirement. Mr. Myers did what was best for him, but his leaving was not for a good-cause reason attributable to the employer according to Iowa law. Mr. Myers is not eligible for UI benefits.

The undersigned further concludes IWD overpaid Mr. Myers REGULAR (state) UI benefits in the total gross amount of \$1,164.00.

Iowa Code §96.3(7) provides, in relevant part:

*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

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<sup>2</sup> Iowa Code § 96.6(2).

<sup>3</sup> *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

<sup>4</sup> *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

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.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

Since Mr. Myers is not eligible for UI benefits based on how his job ended with the employer, he is not eligible for the UI benefits IWD already sent him. IWD overpaid Mr. Myers REGULAR (state) UI benefits in the total gross amount of \$1,164.00 for two weeks between October 22, 2023 and November 11, 2023. Since the employer participated in the fact-finding interview, Mr. Myers is required to repay these UI benefits.

**DECISION:**

The October 16, 2023 (reference 01) UI decision is REVERSED. Mr. Myers voluntarily left his employment without good cause attributable to the employer. Mr. Myers is not eligible for UI benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, as long as no other decision denies him UI benefits.

IWD overpaid Mr. Myers REGULAR (state) UI benefits in the gross amount of \$1,164.00 for two weeks between October 22, 2023 and November 11, 2023. Since the employer participated in the fact-finding interview, Mr. Myers is required to repay these UI benefits back to IWD.



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Daniel Zeno  
Administrative Law Judge

November 20, 2023  
Decision Dated and Mailed

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**APPEAL RIGHTS.** If you disagree with this 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 Avenue Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://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> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**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 Avenue Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
En línea: [eab.iowa.gov](http://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 adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**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.