

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMMY S BOSWELL
Claimant

APPEAL NO. 08A-UI-06572-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AGRI DRAIN CORP
Employer

OC: 06/15/08 R: 01
Claimant: Respondent (2-R)

Section 96.5-1 - Voluntary Quit
Section 96.4-3 - Able to and Available for Work
Section 96.3-7 - Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated July 14, 2008, reference 01, that concluded the claimant had offered to return to work after recovering from an injury but no work was available. A telephone hearing was held on August 4, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. James Gillam, Attorney at Law, participated in the hearing on behalf of the employer with witnesses Kim Wedemeyer and Kris Stringham. Exhibits One through Eight were admitted into evidence at the hearing.

ISSUES:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

Was the claimant able to and available for work?

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked for the employer as a laborer in the powder coat department from April 13, 2006, to March 13, 2008. She had suffered a work-related injury in August 2007 that resulted in arm and neck pain. She was off work due to this injury but was released to return to work, initially for light-duty work but then for full-duty work in her regular job.

The claimant was examined by a physician in March 2008 due to problems she was having with pain, tingling, and weakness in her right arm and shoulder. She was referred to a neurologist who diagnosed the claimant with carpal tunnel syndrome. Surgery was recommended. The claimant was excused from working by her doctor for this condition.

The claimant requested and was granted leave under the Family and Medical Leave Act (FMLA) starting March 14, 2008. In the doctor's statement dated April 24, the claimant was released to

return to light-duty work involving lifting no more than 20 pounds and no repetitive movements starting April 28, 2008. The claimant worked on April 28 but stopped working after that date and went back on FMLA.

The claimant was informed and understood that she was entitled to 12 weeks of FMLA and that her leave would end on June 9, 2008. On May 28, 2008, Kris Stringham, Human Resources Representative, sent the claimant a letter informing her that her FMLA was scheduled to end on June 9 and it was expected that she would return to work on June 10, 2008. The form requested that she inform the employer whether or not she intended to return to work as scheduled. The letter stated that if the form was not returned before June 4, the employer would assume she was returning to work as scheduled. The form also required the claimant to obtain a release to return to work from her doctor.

After the claimant received the letter, she contacted her physicians but none of them would release her to return to her regular job. She asked one of her doctors to fax a statement to the employer indicating that she was not released to return to work. The doctor failed to fax anything to the employer.

The claimant did not return the form or have any communication with anyone with the employer regarding her employment status. She failed to return to work on June 10, 2008. Consequently, Stringham mailed a letter to the claimant on June 10 informing her that because she had failed to report to work after her medical leave expired and she had not contacted the employer, her employment was terminated.

After the claimant received the letter, she contacted the doctor and discovered that the doctor had not sent anything to the employer. She did not contact the employer to attempt to return to work or dispute her employment status.

The claimant filed a new claim for unemployment insurance benefits with an effective date of June 15, 2008. When she filed for unemployment insurance benefits, she was able to work in other jobs that did not required lifting over 20 pounds, repetitive movements, or reaching overhead, which were the restrictions imposed by her doctor that time. She has been seeking work within those restrictions. The claimant has filed for and received benefits since June 15, 2008.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

The unemployment insurance rules provide that a leave of absence negotiated between an employee and employer is deemed a period of involuntary unemployment and the employee is ineligible during the period of the leave of absence. If the employer fails to reemploy the employee at the end of the leave of absence, the separation is considered a layoff and the employee is eligible for benefits. If the employee fails to return to work at the end of the leave of absence, the employee is considered to have voluntarily quit employment and is ineligible for benefits if the employee quit without good cause attributable to the employer. The rules provide that the leave of absence may be extended but only if there is evidence that both parties have voluntarily agreed. 871 IAC 24.22(2)j.

Based on this rule, the claimant is considered to have voluntarily left employment when she failed to return to work after her leave expired. She had no communication with the employer. She did not follow up to make sure her doctor had sent the medical statement or request that her leave be extended. She made no effort to preserve her employment.

The law provides that a claimant who leaves employment for health reasons can be eligible under certain circumstances.

First, the unemployment insurance rules provide that a claimant is qualified to receive benefits if compelled to leave employment due to a medical condition attributable to the employment. The rules require a claimant: (1) to present competent evidence that conditions at work caused or aggravated the medical condition and made it impossible for the claimant to continue in employment due to a serious health danger and (2) to inform the employer before quitting of the work-related medical condition and that the claimant intends to quit unless the problem is corrected or condition is reasonably accommodated. 871 IAC 24.26(6)b.

The claimant has not satisfied all the requirements of 871 IAC 24.26(6)b. While I believe the preponderance of the evidence shows the claimant left employment due to a medical condition attributable to the employer, the evidence does not show she informed the employer that she would quit employment if her medical condition was not reasonably accommodated.

Second, the unemployment insurance law provides that an individual is qualified to receive benefits if she: (1) left employment because of illness, injury or pregnancy with the advice of a licensed and practicing physician, (2) notified the employer that she needed to be absent because of the illness or injury, and (3) offered to return to work for the employer when recovery was certified by a licensed and practicing physician, but her regular work or comparable suitable work was not available. Iowa Code § 96.5-1-d. The rules defined recovery "as the ability to perform all of the duties of the previous employment." 871 IAC 24.26(6)a.

The claimant has not satisfied all the requirements of Iowa Code § 96.5-1-d since there is no evidence that she has offered to return to work after being released to perform all the duties of her former job. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount or satisfies the conditions of Iowa Code § 96.5-1-d as outlined above.

The unemployment insurance rules provide that a person must be physically able to work, not necessarily in the individual's customary occupation, but in some reasonably suitable, comparable, gainful, full-time endeavor that is generally available in the labor market. 871 IAC 24.22(1)b. The evidence establishes that the claimant was able to perform gainful work, just not work that requires heavy lifting or repetitive movement. There is work available in the labor market meeting such restrictions that she is qualified to perform, and she has been actively looking for such work in compliance with the requirements of the law.

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 overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated July 14, 2008, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount or satisfies the conditions of Iowa Code § 96.5-1-d by offering to return to work after being released to perform all the duties of her former job. She is not ineligible based the requirements of Iowa Code § 96.4-3 regarding being able to and available for work. The matter of determining the amount of the overpayment and whether the overpayment should be recovered is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css