

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDON D MANTON
Claimant

APPEAL NO: 18A-UI-11534-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KEOKUK MILLS LLC
Employer

OC: 10/28/18

Claimant: Respondent (2)

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.3(7) – Benefit Overpayment

STATEMENT OF THE CASE:

Keokuk Mills, LLC, the employer, filed a timely appeal from a representative's unemployment insurance decision dated November 20, 2018, (reference 01) which held the claimant, Brandon Manton, eligible to receive unemployment insurance benefits, finding he was dismissed from work on September 2, 2018 but finding that the record did not show willful or deliberate misconduct. After due notice was provided, a telephone hearing was held on December 12, 2018. Although duly notified, the claimant did not participate. Employer participated by Ms. Madelyn Giesler, Human Resource Representative.

ISSUES:

The first issue is whether the claimant left or quit work with good cause attributable to the employer.

The second issue is whether the claimant was overpaid unemployment insurance benefits and if so, whether the claimant is liable to repay the overpayment or the employer should be held chargeable based upon the employer's participation or non-participation in the fact-finding interview.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: The claimant, Brandon Manton, was employed by Keokuk Mills, LLC, from January 25, 2018 until about September 2, 2018, when he voluntarily left employment, stating he could not pass a drug screen. He was employed as a full-time "melter" for the company and was paid by the hour. Claimant's immediate supervisor was Kevin Manton, his father.

The claimant voluntarily quit his employment with Keokuk Mills, LLC after he was reminded that he was due to take a drug screen test that day. The claimant stated that he could not pass the test and then left the employer's facility prior to the end of the work shift. The claimant had not been directed to leave.

Approximately one month earlier, his supervisor, who was also his father, reported to management his belief that the claimant was under the influence of controlled substances. The company has an informal drug policy and testing procedure. Prior to the drug screening test, the claimant admitted that he was under the influence of controlled substances. Violation of the company's drug policy does not result in discharge from employment. The employer's goal in applying its drug policy is to keep employees employed by the company, and to give the employees a reasonable amount of time to stop using controlled substances. It is the employer's expectation that after a warning, employees will improve and will continue in employment with the company.

On September 2, 2018, the employer intended to retest the claimant again, using its informal testing process. The employer intended to allow him to continue employment and extend the period for his voluntary recovery, if necessary. The claimant was called to the human resources office. Before any testing took place, the claimant quit by walking off the job, stating he could not pass the drug test. Work continued to be available to the claimant at the time he left employment.

REASONING AND CONCLUSIONS OF LAW:

The first question before the administrative law judge is whether the evidence in the record establishes that the claimant was dismissed by the employer or whether the claimant voluntarily left employment. The administrative law judge concludes that the evidence in the record establishes that the claimant, Brandon Manton, quit employment by walking off the job. He was not discharged by the employer.

Having concluded the claimant voluntarily quit employment, the question then becomes whether the evidence in the record establishes that the claimant quit employment with good cause attributable to the employer. It does not. Benefits are denied.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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(28) 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:

(28) The claimant left after being reprimanded.

In the case at hand, the employer's drug policy is essentially used as a disciplinary tool to encourage employees not to use or be under the influence of controlled substances. It appears the employer's intention is to identify individual employees who test positive for controlled substances and to issue a warning to that employee. As a form of warning, employees are given 30 days to show improvement. It further appears that the intention of the company is then to issue additional 30 day warning periods as needed until the employee successfully undergoes testing without a positive result.

Iowa Code § 730.5 provides the authority under which a private sector employer doing business in Iowa may conduct drug or alcohol testing on employees. In *Eaton v. Iowa Employment Appeal Board*, 602 N.W.2d 553 (Iowa 1999), the Iowa Supreme Court considered the statute in a case where an employee was discharged for failing to pass a private sector employer drug test that did not meet the mandatory requirements of Iowa Code § 730.5. In that case, the Iowa Supreme Court held that the illegal drug test could not provide a basis to render the employee ineligible for unemployment compensation benefits.

In the case at hand, the employer, Keokuk Mills, LLC, did not discharge the claimant, Brandon Manton, as a result of the illegal drug test initially given to him. If the claimant was discharged at that time, the illegal drug test could not provide a basis to disqualify him from unemployment insurance benefits because the employer had not complied with the statutory requirements for the drug test. The employer's intention was not to discharge the claimant but, in effect, to identify a problem he needed to work on and allow the claimant to demonstrate that he would improve. The employer intended to give the claimant an additional 30 days to improve. During these additional 30 day periods, the claimant continued to be employed in his regular job and pay.

On the claimant's last day of work, 30 days had elapsed from the previous drug screen test. The claimant elected to quit his job, rather than submit to the test, making a direct admission that he was continuing to use controlled substances. The claimant quit his job in anticipation of another disciplinary period. The claimant would not have been discharged as a result of the illegal drug test. However, he quit this employment after announcing he had not complied with the terms of the previous 30 day warning. At the time the claimant quit, he had not been discharged by the employer. His employment was not in jeopardy.

The claimant has the burden to prove that his or her voluntary leaving was for good cause attributable to the employer. Although given the opportunity to participate and provide sworn testimony in this matter, the claimant elected not to do so. Quitting one's employment after committing a violation of known company rules is not considered to be quitting with good cause attributable to the employer. Accordingly, benefits are denied until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Because the claimant was deemed ineligible for benefits, any benefits the claimant received could constitute an overpayment. The administrative record reflects the claimant received unemployment benefits in the amount of \$1,401.00 since filing a claim with an effective date of October 28, 2018, for the benefit weeks ending November 24, 2018 through December 8, 2018. The administrative record also establishes that the employer did not participate in the fact-finding interview or make a first-hand witness available for rebuttal.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award

benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3(7)a, b.

The claimant received benefits but is now denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the claimant did not receive benefits due to fraud or willful misrepresentation and employer failed to participate in the finding interview, the claimant is not required to repay the overpayment and the employer remains subject to charge for the overpaid benefits.

DECISION:

The representative's unemployment insurance decision dated November 20, 2018, reference 01 is reversed. Claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are denied until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible. Claimant was overpaid unemployment insurance benefits in the amount of \$1,401.00 for the benefit weeks ending November 24, 2018 through December 8, 2018. Claimant is not liable to repay this amount. The employer's account shall be charged based upon the employer's failure to participate in the fact-finding interview.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn