

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

JOSHUA D PATTISON
Claimant

APPEAL NO. 22A-UI-17630-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRIES ENTERPRISES INC
Employer

**OC: 09/11/22
Claimant: Respondent (2R)**

Iowa Code Section 96.5(1)(d) – Voluntary Quit
Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

On October 3, 2022, the employer filed a timely appeal from the September 30, 2022 (reference 01) decision that allowed benefits to the claimant, provided the claimant was otherwise eligible, and that held the employer's account could be charged for benefits, based on the deputy's conclusion the claimant was discharged on September 15, 2022 for no disqualifying reason. After due notice was issued, a hearing was held on October 31, 2022. Joshua Pattison (claimant) did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Angela Helmricks represented the employer. Exhibits 1 and 2, the employer's appeal letter attachment and second, gratuitous online appeal respectively, were received into evidence. The administrative law judge took official notice of the Iowa Workforce Development record of benefits paid to the claimant (DBRO). The administrative law judge took official notice of the fact-finding materials for the limited purpose of documenting the employer's participation in the fact-finding interview.

ISSUES:

Whether the claimant was laid off, was discharged for misconduct in connection with the employment, or voluntarily quit without good cause attributable to the employer.
Whether the claimant was overpaid unemployment insurance benefits.
Whether the claimant must repay overpaid benefits.
Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Joshua Pattison (claimant) began his employment with Pries Enterprises, Inc. on June 20, 2022 and worked as a full-time Anodized Night Shift Supervisor until September 1, 2022. The claimant's work hours were 10:00 p.m. to 6:00 a.m., Monday through Friday and alternating Saturdays. The claimant finished his most recent shift on the morning of September 1, 2022.

On September 1, 2022, the claimant's doctor took the claimant off work due to the claimant's toe being infected subsequent to removal of a hang-nail. On September 1, 2022, the claimant

notified Angela Helmricks, Human Resources Manager, of his need to go off work. The claimant told the employer about his infected toe and that the infection had entered the bone of his toe. The claimant provided a medical note that indicated he would need to remain off work until September 9, 2022.

The claimant did not return to work on September 9, 2022. On September 8, 2022, Ms. Helmricks spoke with the claimant. The claimant advised that his toe was not improving and that the doctor now believed the claimant's toe had been broken in the course of the hang-nail removal. The claimant told the employer that he might have a blood clot in his leg. The claimant told the employer he had an appointment with a medical specialist set for September 13, 2022 and that he expected to learn the results of a CT scan by then. Ms. Helmricks asked whether the claimant would be able to return to work on September 13, 2022. The claimant told the employer he did not know what the specialist would say regarding whether he could return to work at that time.

The claimant did not return to work on September 13, 2022. When Ms. Helmricks did not hear from the claimant on that day, she sent an email message to the claimant on September 14, 2022 and asked for an update. On that same day, Ms. Helmricks spoke with the claimant by telephone. The claimant told the employer he had two "blockages" in his foot and ankle and was to see a medical specialist on September 19, 2022. Ms. Helmricks asked the claimant whether he would be able to return to work on September 19, 2022 or whether his return would be further delayed. The claimant said it depended on what the specialist told him. Ms. Helmricks told the claimant that he had not been with the employer long enough to qualify for protected leave under the Family and Medical Leave Act (FMLA) and that she would need to consult with the company's attorney regarding whether the employer could grant FMLA leave.

After consulting with the company's attorney, Ms. Helmricks called the claimant on September 15, 2022. When the claimant did not answer, Ms. Helmricks left a voicemail message. Ms. Helmricks stated the employer was unable to grant FMLA leave. In other words, the employer would no longer hold the claimant's position open for the claimant. Ms. Helmricks invited the claimant to contact the employer with an update once he had a better timeline regarding his availability for work. The claimant did not make further contact with the employer.

During the week of September 11, 2022, the claimant established an unemployment insurance claim that Iowa Workforce Development deemed effective September 11, 2022. IWD set the claimant's weekly benefit amount at \$572.00. The claimant made weekly claims for the week ending September 17 and 24, 2022 and received \$1,144.00 in benefits for those two weeks. Pries Enterprises, Inc. is not a base period employer for purposes of the benefit year that began for the claimant on September 11, 2022. For that reason, Pries Enterprises has not been charged for benefits in connection with the claim and would not be charged under any circumstances for benefits paid in connection with the claimant's current benefit year.

On September 28, 2022, an Iowa Workforce Development Benefits Bureau deputy held a fact-finding interview that addressed the claimant's separation from the employer. The claimant and Ms. Helmricks participated in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

Iowa Administrative Code rule 871-24.1(113) characterizes the different types of employment separations as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of labor-saving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

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 Iowa Administrative Code rule 871-24.25.

Iowa Code section 96.5(1)(d) 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Administrative Code rule 817-24.26(6) provides as follows:

Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the

employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

The evidence in the record establishes a voluntary quit without good cause attributable to the employer and due to a non-work related illness or injury. The claimant went off work effective September 1, 2022 due to a non-work related illness or injury and pursuant to the advice from his doctor. The employer approved an initial leave of absence and extension of the leave of absence through September 13, 2022. The employer did not approve a leave of absence for the period beyond September 13, 2022. At the time the employer notified the claimant on September 15, 2022 that the employer would no longer hold the claimant's position for the claimant, the claimant remained off work for an indefinite period. The claimant specifically declined to commit to return by September 19, 2022, the date of his next medical appointment and indicated his need to remain off work was indefinite. The employer continued to have the claimant's regular work available for the claimant. The claimant has not presented evidence to indicate he had recovered from his illness or that he has been released to return to his regular duties with the employer. The claimant has not returned to the employer to request reinstatement to the employment. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. Because the claimant's quit was due to a non-work related illness, the claimant may also requalify for benefits by satisfying the steps set forth at Iowa Code section 96.1(d) and Iowa Administrative Code rule 817-24.26(6)(a). See above. The employer is not a base period employer. Accordingly, the employer has not been charged for benefits and cannot be charged for benefits in the current benefit year. See Iowa Code section 96.7(2) (regarding base period employer liability). The employer's account shall not be charged.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible for 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 base period employer failed to participate in the initial proceeding, the base period employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

Because the employer participated in the fact-finding interview, the claimant is required to repay the \$1,144.00 in overpaid benefits the claimant received for the two weeks between September 11, 2022 and September 24, 2022.

DECISION:

The September 30, 2022 (reference 01) decision is REVERSED. The claimant voluntarily quit the employment without good cause attributable to the employer and due to a non-work related medical issue. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. Because the claimant's quit was due to a non-work related illness, the claimant may also requalify for benefits by satisfying the steps set forth at Iowa Code section 96.1(d) and Iowa Administrative Code rule 817-24.26(6)(a). See above. The employer's account has not been charged and shall not be charged. The claimant is overpaid \$1,144.00 in benefits for two weeks between September 11, 2022 and September 24, 2022. The claimant must repay the overpaid benefits.

REMAND:

This matter is REMANDED to the Iowa Workforce Development Benefits Bureau for determination of whether the claimant has been able to work and available for work since September 11, 2022.



James E. Timberland
Administrative Law Judge

November 10, 2022
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the 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
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: 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>.

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
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: 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 adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

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.