

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL L MAXWELL
Claimant

APPEAL NO. 07A-UI-11186-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**AMERICAN BUILDING MAINTENANCE CO
OF KENTUCKY NIC**
Employer

**OC: 10/14/07 R: 02
Claimant: Respondent (2-R)**

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.3(7) – Recovery of Overpayment

STATEMENT OF THE CASE:

American Building Maintenance Company of Kentucky filed a timely appeal from the November 27, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on December 18, 2007. Claimant Michael Maxwell participated. Beth Crocker of Employer's Unity represented the employer and presented testimony through Dee Hunter and Sue Shapley. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant.

ISSUE:

Whether the claimant voluntarily quit or was discharged from the employment. The administrative law judge concludes the claimant voluntarily quit.

Whether the claimant's voluntary quit was for good cause attributable to the employer.

Whether the claimant has been overpaid benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Michael Maxwell was employed by American Building Maintenance Company as a full-time maintenance worker from July 1, 2006 until October 25, 2007. Mr. Maxwell last appeared and performed work on October 13, 2007. Mr. Maxwell reported absences on October 14, 15, 16, 18, 19, 22, and 23. When Mr. Maxwell called in the absences, he told the employer the absences were attributable to illness. On October 23, Mr. Maxwell went to the workplace to discuss his return to the employment. The employer's work rules required Mr. Maxwell to provide medical documentation for absences attributable to illness, especially when the absences exceeded three days. Mr. Maxwell was aware of this requirement. Mr. Maxwell spoke with Assistant Manager Dee Hunter and Account Manager Sue Shapley, who reminded Mr. Maxwell that he needed to provide a doctor's note to return to work. Mr. Maxwell indicated that he would provide such a note. Mr. Maxwell also notified the employer that he had been experiencing

marital strife and asked the employer for changes in the conditions that would allow him to avoid his wife. Mr. Maxwell's wife also worked for the employer, but worked a different shift. The employer thought the work arrangement already allowed Mr. Maxwell to avoid his wife if he needed to.

After the conversation with the employer on October 23, Mr. Maxwell did not return to the employment. On October 24, Mr. Maxwell neither reported for work nor notified the employer that he would be absent. The greater weight of the evidence indicates that Mr. Maxwell did not present a doctor's note to the employer for any of the days he was absent. On October 25, Ms. Hunter contacted Mr. Maxwell to see whether he planned to return to the employer. Mr. Maxwell indicated he had not obtained a note from his doctor and would not be returning to the employer.

Though Mr. Maxwell's discussions with the employer occurred on October 23 and 25, Mr. Maxwell had actually established a claim for benefits during the previous week. The claim was effective October 14, 2007. Mr. Maxwell received \$1,822.00 in benefits, including benefits for the week that ended October 20, 2007, when he was allegedly ill.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether Mr. Maxwell quit or was discharged from the employment. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). 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.

After hearing and considering Mr. Maxwell's testimony, the administrative law judge concludes that Mr. Maxwell's testimony is not credible. Mr. Maxwell's assertion that the flu prevented him from reporting for work over a nine-day span is not credible. Mr. Maxwell's assertion that he could not get in to see a doctor until October 22 is not credible. Mr. Maxwell's assertion that his absences were all attributable to illness is not credible. The greater weight of the evidence indicates that Mr. Maxwell's marital strife played a role in some or all of Mr. Maxwell's absences. The greater weight of the evidence indicates that Mr. Maxwell applied for unemployment insurance benefits shortly after his absences started and a week before he returned to talk to the employer. The greater weight of the evidence indicates that Mr. Maxwell was unable to get a note from his doctor to cover the absences because the absences were not attributable to illness. The greater weight of the evidence indicates that Mr. Maxwell realized he could not get a doctor's note to justify his absences and decided to cut his losses and separate from the employment. The evidence in the record persuades the administrative law judge that Mr. Maxwell voluntarily quit and was not discharged.

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.

The greater weight of the evidence indicates that Mr. Maxwell voluntarily quit for personal reasons and not for good cause attributable to the employer. The evidence indicates that Mr. Maxwell quit because he knew he could not produce a doctor's note to cover the extended absence and to avoid his estranged spouse. Mr. Maxwell is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Maxwell.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because Mr. Maxwell has received benefits for which he has been deemed ineligible, those benefits constitute an overpayment that Mr. Maxwell must repay. Mr. Maxwell is overpaid \$1,822.00.

This matter is remanded for determination of whether the claimant has been able to work and available for work since establishing his claim. See Iowa Code section 96.4(3).

DECISION:

The Agency representatives November 27, 2007, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. 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, provided he is otherwise eligible. The employer's account shall not be charged. The claimant is overpaid \$1,822.00. This matter is remanded for determination of whether the claimant has been able to work and available for work since establishing his claim.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs

