IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

ROBERT W FLACK
Claimant

JELD-WEN INC
Employer

APPEAL 15A-UI-06767-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/30/14
Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-Finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the June 5, 2015, (reference 03) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 14, 2015. Claimant participated. Employer participated through Regional Human Resources Manager Diana Duncan and Safety Manager Chad Burgess.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a shipper from September 16, 2013, and was separated from employment on May 6, 2015, when he resigned.

On March 6, 2015, claimant experienced a severe allergic reaction at work. Claimant went on medical leave. Claimant's personal physician believed he was allergic to the vinyl dust present on employer's production line. Employer's company doctor referred claimant to an allergist. Claimant had an appointment with the allergist, Dr. Jay Brown, in April 2015. Dr. Brown obtained a sample of vinyl dust from employer. Claimant did not react to the dust. However, Dr. Brown confirmed claimant was allergic to dust mites. Dr. Brown does not believe the dust mite allergy was directly associated with employer's workplace. Dr. Brown released claimant to work in employer's warehouse, but restricted him from working on the production line. Dr. Brown also recommended that claimant refrain from smoking cigarettes.

On approximately April 29, 2015, claimant returned to work. He was limited to working in the warehouse area, but he continued to experience problems with allergies. Claimant did not return to his personal doctor or the company doctor for consultation or further testing. Claimant smokes cigarettes. On May 6, 2015, claimant resigned his employment.

The administrative record reflects that claimant has received unemployment benefits in the amount of $2338.00, since his separation on May 6, 2015, through the week ending July 11, 2015. The administrative record also establishes that the employer did participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

Iowa Code § 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. 871-24.26(6)b provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> (6) Separation because of illness, injury or pregnancy.
>
> 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 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.

Claimant contends he resigned his employment because of an allergic condition that was attributable to the employer. However, claimant did not present competent evidence showing his allergy was directly connected with his employment. In addition, claimant did not give employer an opportunity to correct the problem. Employer was willing to accommodate claimant

as it assigned him to work in the warehouse in accordance with his restrictions. When that did not work, a reasonable person would have gone to the doctor to see if additional accommodations would have made it possible to continue employment. Instead, claimant resigned.

DECISION:

The June 5, 2015, (reference 03) unemployment insurance decision is reversed. Claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as 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 claimant has been overpaid unemployment insurance benefits in the amount of $2338.00 and is obligated to repay the agency those benefits. The employer did participate in the fact-finding interview and its account shall not be charged.

_____
Christine A. Louis
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Decision Dated and Mailed

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