

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BETTY I SIX
Claimant

APPEAL NO. 06A-UI-09419-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CARGILL MEAT SOLUTIONS
CORPORATUION**
Employer

OC: 08/20/06 R: 03
Claimant: Respondent (2)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Cargill Meat Solutions filed a timely appeal from the September 13, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on October 9, 2006. Claimant Betty Six participated. Human Resources Associate Erica Bleck represented the employer. The administrative law judge took official notice of Agency records regarding benefits disbursed to the claimant and received Employer's Exhibit One into evidence.

ISSUE:

Whether Ms. Six voluntarily quit her employment for good cause attributable to the employer. The administrative law judge concludes the quit was without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Betty Six was employed by Cargill Meat Solutions on a full-time basis from April 28, 2003 until July 17, 2006, when she agreed to quit her employment as part of a Workers' Compensation settlement agreement. Ms. Six was diagnosed with carpal tunnel syndrome in the fall of 2003 and underwent surgery for the condition on November 28, 2003. On February 14, 2004, Ms. Six re-injured her wrist. Ms. Six continued to work for Cargill after the re-injury and last performed services for Cargill on July 14, 2006. After the workplace injuries and over the course of the employment, Ms. Six exercised the opportunity to "bid" for or transfer to positions that would be less physically demanding. For approximately the last six months of employment, Ms. Six worked as a forklift operator. Ms. Six was able to perform the duties associated with the forklift operator position, but required assistance from coworkers to reload boxes if they fell off. Ms. Six was involved in ongoing pain management treatment at the time she separated from the employment. Ms. Six's treating physician(s) had previously recommended that she transfer to a less taxing position within Cargill and had suggested she might want to consider outside employment, but had not advised Ms. Six to leave the forklift operator position.

On July 17, 2006, Ms. Six participated in a Workers' Compensation settlement conference. Ms. Six participated with the assistance of legal counsel. As part of the settlement discussion, Cargill communicated to Ms. Six through the Deputy Workers' Compensation Commissioner that in exchange for a \$55,000.00 settlement, Ms. Six would have to agree to quit the employment. Cargill communicated through the Deputy that Ms. Six could also elect to continue in the employment and receive a smaller settlement consisting of period benefit payments. Ms. Six indicates that during the settlement conference the Deputy conveyed that if Ms. Six continued in the employment she would likely eventually be discharged. Ms. Six was not faced with the immediate prospect of being discharged if she did not quit. Ms. Six elected to accept the \$55,000.00 settlement offer and agreed to quit the employment. On July 17, Ms. Six executed a written settlement agreement.

Ms. Six had recently received one or more reprimands in the course of the employment. However, Ms. Six did not believe that she faced imminent discharge at the time she agreed to quit the employment.

Ms. Six established a claim for benefits that was effective August 20, 2006, and has received benefits.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Six quit for good cause attributable to the employer. It does not.

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.

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.

871 IAC 24.26(21) 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:

- (21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

The evidence in the record fails to indicate a quit in lieu of imminent discharge. Ms. Six's testimony indicated a concern that she would eventually be discharged from the employment. The alternative settlement offers presented to Ms. Six, one of which involved Ms. Six continuing in the employment and receiving a smaller settlement, indicate that any possible future discharge was not imminent. Ms. Six was not asked to choose between quitting or being

immediately discharged. Instead, Ms. Six chose, with the assistance of counsel, to accept a larger settlement by quitting the employment, rather than continue in the employment and accept a smaller settlement.

While there is no Iowa case law on point, other states have addressed the situation of a voluntary quit in the context of a Workers' Compensation settlement. In Edward v. Sentinel Management Co., 611 N.W.2d 366 (Minn. App. 2000), the claimant resigned as part of a workers' comp settlement package. Minnesota court denied benefits noting that the claimant could have continued working while pursuing his claim. The evidence in the case established that the claimant could still perform his work and was doing so while the negotiations continued. The court found the situation analogous to a person negotiating for early retirement while work was still available. In Larson v. Michigan Employment Sec. Com'n, 140 N.W.2d 777 (Michigan App. 1966), the Michigan court allowed benefits to a severely injured worker who could not perform his former duties and for whom the alternatives were remaining employed with no income or resigning in order to receive income. Iowa administrative law judges follow these lines of analysis and make similar distinctions.

The evidence in the record establishes that Ms. Six continued to be able to perform the forklift duties, but voluntarily quit as part of the Workers' Compensation settlement.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Six voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Six is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Six.

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 Ms. Six has received benefits for which she has been deemed ineligible, those benefits constitute an overpayment that Ms. Six must repay to the Agency. Ms. Six is overpaid \$2,672.00

DECISION:

The Agency representative's September 13, 2006, 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 she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged. The claimant is overpaid \$2,672.00

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs