

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RODNEY C LEWIS
Claimant

APPEAL NO. 16A-UI-07194-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ATLAS HYDRAULICS INC
Employer

OC: 06/05/16
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 24, 2016, reference 01, decision that allowed benefits to the claimant, provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on an agency conclusion that the claimant was discharged on May 11, 2016 for no disqualifying reason. After due notice was issued, a hearing was held on July 18, 2016. Claimant Rodney Lewis did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Ethan Vaas represented the employer and presented additional testimony through Derik Sulzle and Vicki Bowers. The administrative law judge took official notice of the agency's administrative record of benefits disbursed to the claimant.

ISSUES:

Whether Mr. Lewis separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

Whether Mr. Lewis was overpaid benefits.

Whether Mr. Lewis is required to repay benefits.

Whether the employer's account may be assessed for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Rodney Lewis was employed by Atlas Hydraulics, Inc. in Newton as a full-time Team Member Materials Handler from May 2014 and last performed work for the employer on Monday, April 18, 2016. Mr. Lewis' work hours were 6:00 a.m. to 2:00 p.m., Monday through Friday. In October 2015, Mr. Lewis applied for intermittent leave under the Family and Medical Leave Act (FMLA). Mr. Lewis requested the intermittent FMLA leave so that he could assist his mother, who was suffering from cancer. Mr. Lewis' mother's doctor provided FMLA certification to the employer that indicated Mr. Lewis' mother needed assistance with getting to and from medical

appointments. The employer approved Mr. Lewis' request for intermittent FMLA leave. The employer did not require Mr. Lewis to call in absences on those days when he elected to use FMLA leave.

In 2016, Mr. Lewis' absences from the workplace changed from intermittent to consecutive whole day absences. In March 2016, the employer asked Mr. Lewis to have his mother's doctor recertify his need to be absent to assist his mother with her medical issues. Mr. Lewis' mother's doctor provided the employer with medical certification materials that echoed the initial certification. The doctor indicated that Mr. Lewis would need to be absent intermittently to assist his mother. The doctor did not certify a need for Mr. Lewis to be absent on an ongoing basis from whole shifts.

As of April 18, 2016, Mr. Lewis had used 71.25 days' worth of FMLA leave. Mr. Lewis did not return to the employment after he worked on April 18. On May 3, 2016, Derik Sulzle, Plant Manager, telephoned Mr. Lewis to let him know that he only had 1.235 days of FMLA leave remaining. Mr. Lewis said that he understood. Mr. Sulzle took that to mean that Mr. Lewis would be returning to work the next day, but Mr. Lewis did not return or make further contact with the employer. The employer continued to have the same work available for Mr. Lewis.

On May 11, 2016, when Mr. Lewis had still not returned to the employment or made further contact with the employer, Mr. Sulzle concluded that Mr. Lewis had abandoned the employment. The employer's written policy indicates that the employer would deem three consecutive absences without notice to the employer to indicate abandonment of the employment. Mr. Lewis had received the employee handbook that contained the policy and had signed for his receipt of the handbook. Mr. Lewis had been absent for more than three consecutive shifts without notifying the employer and without available FMLA leave.

Mr. Lewis established a claim for unemployment insurance benefits that was effective June 5, 2016. Mr. Lewis has received \$1,820.00 in benefits for the five-week period between June 5, 2016 and July 9, 2016. Atlas Hydraulics is Mr. Lewis' sole base period employer. On June 21, 2016 a Workforce Development claims deputy held a fact-finding interview to address Mr. Lewis' separation from the employment. Vick Bowers, Human Resources Manager, represented the employer at the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113) provides 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 laborsaving 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 871 IAC 24.25.

Iowa Code § 96.5-1-c 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. But the individual shall not be disqualified if the department finds that:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

Iowa Admin. Code r. 871-24.22(2)j(1)(2)(3) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

Iowa Admin. Code r. 871-24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The weight of the evidence in the record establishes that Mr. Lewis voluntarily quit the employment by failing to return to work on May 4, 2016, at the time he exhausted available FMLA leave. The weight of the evidence indicates that Mr. Lewis had been absent over and above the extent supported by the FMLA certification materials. The weight of the evidence fails to establish that it was medically necessary for Mr. Lewis to continue off work beyond May 3, 2016 to care for his mother. Mr. Lewis did not participate in the appeal hearing and did not present any medical documentation or other evidence to support a need to continue off work.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Lewis voluntarily quit the employment without good cause attributable to the employer and that the quit was effective May 4, 2016. Mr. Lewis is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Lewis must meet all other eligibility requirements.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible 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 § 96.3-7-a, -b.

Mr. Lewis received benefits but has been denied benefits as a result of this decision. Mr. Lewis was therefore overpaid \$1,820.00 in benefits for the five-week period between June 5, 2016 and July 9, 2016. Because the employer participated in the fact-finding interview, Mr. Lewis is required to repay the overpaid benefits. The employer's account will be relieved of liability for benefits, including liability for benefits already paid.

DECISION:

The June 24, 2016, reference 01, decision is reversed. The claimant voluntarily quit the employment effective May 4, 2016 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. The claimant must meet all other eligibility

requirements. The claimant was overpaid \$1,820.00 in benefits for the five-week period between June 5, 2016 and July 9, 2016. The claimant must repay the overpaid benefits. The employer's account will be relieved of liability for benefits, including liability for benefits already paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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