

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICHARD L WATERHOUSE**  
Claimant

**APPEAL NO. 08A-UI-08048-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JELD-WEN INC**  
Employer

**OC: 01/27/08 R: 03  
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit  
Section 96.4-3 – Able and Available  
Section 96.3-7 – Overpayment  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant appealed from the February 18, 2008, reference 01, decision that concluded the claimant was overpaid unemployment insurance benefits as a result of a failure to report or incorrectly reporting vacation pay from Jeld-Wen (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 24, 2008. The claimant participated personally. The employer participated by Peter Cipriano, Hearings Representative; Jay Borrell, General Manager; Bret Paulsen, Group Manager; and Tom Gordon, Maintenance Manager. Exhibit D-1 was admitted into evidence.

**ISSUE:**

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 4, 2006, as a full-time millwright working the overnight shift. Later on September 12, 2007, the employer discovered a piece of equipment was not functioning properly and had to be fixed. The repair was not easy. The claimant felt he was the only one working while the supervisor and his co-workers looked. The others joked around and did not help. Early on September 13, 2007, the claimant threw a tool, said he quit and walked out. He sat in his truck until the maintenance manager arrived. He told the maintenance manager that he could not do it anymore and quit. The maintenance manager thought the claimant was talking about working nights.

The claimant left the workplace and took a long time driving home. Once he reached home he slept for 24 hours. On September 15, 2007, he was hospitalized for stroke. The claimant called the employer on September 17, 2007, but was unable to connect with the plant manager.

The claimant was hospitalized through September 21, 2007. He has not been released to return to work without restriction by his physician. He continues to suffer from vertigo and double vision.

A disqualification decision was mailed to the employer's address of record on February 18, 2008. The employer did receive the decision and mailed an appeal on February 25, 2008. The department did not receive the appeal.

**REASONING AND CONCLUSIONS OF LAW:**

The first issue to be considered in this appeal is whether the employer's appeal is timely. The administrative law judge determines it is.

Iowa Code section 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The employer mailed an appeal within the time period allowed by law. Therefore, the appeal shall be accepted as timely.

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by the claimant's actions. The claimant said he quit and walked off the job. There was no evidence presented at the hearing of good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

871 IAC 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

- (1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness he is considered to be unavailable for work. The claimant was in the hospital from September 15 through 21, 2007. After September 21, 2007, the claimant has not been physically able to work because of his restrictions. He is considered to be unavailable for work after September 15, 2007. The claimant is disqualified from receiving unemployment insurance benefits beginning September 15, 2007, due to his unavailability for work.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

- a. 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.

- b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

- (2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the

department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this states pursuant to section 602.10101.

The claimant has received benefits since filing the claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

**DECISION:**

The representative's February 18, 2008 decision (reference 01) is reversed. The employer's appeal is timely. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. In addition the claimant is disqualified from receiving unemployment insurance benefits beginning September 15, 2007, due to his unavailability for work. The claimant is overpaid benefits in the amount of \$8,675.00.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/css