

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT R KIRK
Claimant

APPEAL NO. 11A-UI-06576-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 04/10/11
Claimant: Respondent (2-R)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 10, 2011, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on June 14, 2011. Claimant Scott Kirk participated. Store Counsel Scott Walls represented the employer and presented testimony through Mike Anderson. The hearing in this matter was consolidated with the hearing in Appeal Number 11A-UI-06577-JTT. Exhibit One was received into evidence.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Scott Kirk was employed by Menard, Inc., on a full-time basis until April 8, 2011, when he voluntarily quit to return to Dubuque to assist his mother with her health issues. In January 2011, Mr. Kirk accepted a promotion to Shipping and Receiving Manager at one of the employer's stores in Wichita, Kansas. The promotion required that Mr. Kirk relocate to Wichita from Dubuque. Mr. Kirk was working at the employer's store in Cedar Rapids prior to accepting the promotion and transfer to Kansas. Mr. Kirk started his new position and duties at the Wichita store on January 30, 2011.

On April 7, 2011, Mr. Kirk told Wichita Store Manager Mike Anderson that his mother was terminally ill, that his son was having trouble in school, and that he wanted to transfer to the Dubuque store. Mr. Kirk had worked at the Dubuque store earlier in his career with Menard. In connection with approaching Mr. Anderson about the transfer back to Iowa, Mr. Kirk had made some preliminary contact with the management at the Dubuque store and found them receptive to the idea of Mr. Kirk returning to work at the Dubuque store. Any move to the Dubuque store would involve a demotion.

On April 7, Mr. Kirk completed a transfer request. Mr. Kirk believed his request needed to be approved first by Mr. Anderson and then by the Dubuque store manager before it would be forwarded to the home office in Eau Claire for approval by operations or human resources. Mr. Anderson had no objection to the transfer back to Iowa. After Mr. Kirk completed the transfer request, Mr. Anderson forwarded the request to the home office. The next day, Mr. Anderson got a

response from Galen Heckman, assistant operations manager, that there was no position available to Mr. Kirk in Dubuque.

On April 8, Mr. Anderson communicated Mr. Heckman's decision to Mr. Kirk. Mr. Anderson told Mr. Kirk that there was a position available for Mr. Kirk at the employer's other Wichita store. Mr. Anderson told Mr. Kirk that that the employer was willing to give him a leave of absence so that he could address his family issues and then return to the Wichita store. At that point, Mr. Kirk elected to voluntarily separate from the employment in the hope he might be rehirable at some future point, preferably at the Dubuque store. Mr. Kirk completed a voluntary separation form that indicated his last day of employment would be April 8, 2011. Mr. Kirk signed the form. Mr. Anderson marked on the form that he was accepting Mr. Kirk's resignation. Mr. Anderson then walked with Mr. Kirk as Mr. Kirk made his way from the workplace.

Mr. Kirk made contact with the Dubuque store and with the human resources manager at the general office and learned that neither had been contacted about the proposed transfer.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 Administrative Code section 871 IAC 24.26(8) provides:

The claimant left for the necessary and sole purpose of taking care of a member of the claimant's immediate family who was ill or injured, and after that member of the claimant's family was sufficiently recovered, the claimant immediately returned and offered to perform services to the employer, but no work was available. Immediate family is defined as a collective body of persons who live under one roof and under one head or management, or a son or daughter, stepson, stepdaughter, father, mother, father-in-law, mother-in-law. Members of the immediate family must be related by blood or by marriage.

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.

The weight of the evidence in the record establishes that Mr. Kirk voluntarily quit the employment to return to Iowa and care for his terminally ill mother. Mr. Kirk is not currently eligible for benefits and has not been eligible since he established his claim for benefits. Mr. Kirk 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. Mr. Kirk can also requalify for benefits by satisfying all of the factors set forth in Iowa Code section 96.5(1)(c) and Iowa Administrative Code section

871 IAC 24.26(8) above. This would involve returning to the Wichita store to offer his services. If and when Mr. Kirk satisfies the requirements set out in the statute and the administrative rule, then benefits may be charged to the employer's account. Otherwise, they may not.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The Agency representatives May 10, 2011, reference 02, decision is reversed. The claimant voluntarily quit the employment to care for a sick family member. 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 claimant may also requalify for benefits by satisfying all of the factors set forth in Iowa Code section 96.5(1)(c) and Iowa Administrative Code section 871 IAC 24.26(8) above. This would involve returning to the Wichita store to offer his services. If and when the claimant satisfies the requirements set out in the statute and the administrative rule, then benefits may be charged to the employer's account. Otherwise, they may not.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw