IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

APRIL V MATTSON
Claimant

CNH AMERICA LLC
Employer

APPEAL NO. 08A-UI-03047-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/17/08 R: 04
Claimant: Respondent (4)

Iowa Code Section 96.5(1)(d) – Voluntary Quit Based on Medical Condition
Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.3(7) – Recovery of Overpayment

STATEMENT OF THE CASE:

CNH America filed a timely appeal from the March 25, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was commenced on April 10, 2008 and completed on May 8, 2008. Claimant April Mattson participated. Marty Young of TALX UC eXpress represented the employer and presented testimony through Human Resources Representative Michael Craig, Assembly Supervisor Lindsey King and Manufacturing Manager Chris Smith. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One and A into evidence.

ISSUE:

Whether the claimant's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: April Mattson commenced her full-time employment with CNH America on May 15, 2006. Ms. Mattson last appeared and performed work for the employer on October 12, 2007. Ms. Mattson's voluntary quit from the employment was effective October 16, 2007.

On May 23, 2007, Ms. Mattson suffered a workplace injury to her left wrist while she was lifting a toolbox into the cab of a backhoe. Ms. Mattson is left-handed. Ms. Mattson completed her work on the backhoe and reported to the company nurse. On May 29, after her wrist continued to hurt, Ms. Mattson requested to be seen by a doctor. On May 30, Ms. Mattson saw a doctor designated by the employer, Rick Garrels, M.D, at Great River Business Health. Dr. Garrels diagnosed a left wrist sprain and imposed restrictions. The employer placed Ms. Mattson on light-duty status. On June 20, Dr. Garrels referred Ms. Mattson for occupational therapy. On July 19, Dr. Garrels ordered an arthrogram/M.R.I. Dr. Garrels later canceled the arthrogram/M.R.I. referral. On August 1, Dr. Garrels released Ms. Mattson to try production work two hours in a four-hour period. On August 27, Ms. Mattson complained to the company nurse that the employer had assigned her to train on a job that involved heavy lifting and that

her left wrist had started hurting again. Ms. Mattson complained that her supervisor, Mary Lees, told her that she had no restrictions and, therefore, that Ms. Lees could not remove Ms. Mattson from the assigned work. On August 29, Dr. Garrels reaffirmed the diagnosis of a wrist sprain and imposed restrictions. Dr. Garrels again ordered an arthrogram/M.R.I. to rule out a tear in the wrist. Ms. Mattson underwent the arthrogram on September 26, 2007. On September 28, Dr. Garrels diagnosed a left Triangular Fibrocartilage Complex (TFCC) tear. Dr. Garrels referred Ms. Mattson for an orthopedic evaluation and imposed restrictions. On October 10, the company nurse scheduled an orthopedic appointment for Ms. Mattson to occur on October 23. On October 23, the orthopedist indicated that Ms. Mattson might have a strain/sprain and might be developing a small ganglion on her wrist. The orthopedist indicated that Ms. Mattson's wrist was inflamed and that it had never been adequately rested.

Two to three weeks before Ms. Mattson separated from the employment, the employer returned Ms. Mattson to regular duty on the production line. This was despite the fact that Dr. Garrels had several times over imposed restrictions regarding Ms. Mattson's use of her left hand. On September 28, Dr. Garrels had restricted Ms. Mattson to rare (4 to 8 times per hour) use of her left hand, restricted Ms. Mattson to rare use of her left hand to grasp or pinch, restricted Ms. Mattson to rare use of vibratory tools, and restricted Ms. Mattson to lifting no more than five pounds with her left hand and no more than 15 pounds with both hands.

The employer provided Ms. Mattson with a limited selection of duties to choose from based on her seniority. Ms. Mattson initially installed batteries, but soon moved on to hooking up loader bucket levers in backhoes. Ms. Mattson came under the supervision of Assembly Supervisor Lindsey King. Ms. Mattson was instructed that if she had any concerns about the work assignment, she was to address these concerns to Mr. King. Ms. Mattson continued to consult with the company nurse. Mr. King and the company nurse were not in contact regarding Ms. Mattson's work. Ms. Mattson found she was unable to perform her assigned duties without pain to her wrist. Ms. Mattson believed the strength in her wrist was decreasing as a result of the work. On her second day after being released to regular duties, Ms. Mattson asked Mr. King to come to her workstation, where she explained the difficulty she was having performing her duties. Mr. King told Ms. Mattson that he would send someone to help her, but that she should continue to perform her assigned duties. The coworker's assistance reduced the number of installations Ms. Mattson had to perform, but did not address the pain Ms. Mattson experienced when performing her assigned duties.

Ms. Mattson continued to perform the work for several days until she concluded she could no longer perform her assigned duties without damaging her wrist. The employer continued to send help when someone was available. Approximately two weeks before Ms. Mattson quit, she contacted a union representative. The union representative told Ms. Mattson that her situation would be raised with the employer at an upcoming meeting and that Ms. Mattson should wait to see what happened at the meeting. Ms. Mattson did not hear back about the meeting.

On Tuesday, October 9, 2007, Mr. King confronted Ms. Mattson at her workstation and told her she needed to pick up the pace. Ms. Mattson was still struggling to perform her work. Ms. Mattson became emotional and said that she was giving her two-week notice of a quit. Ms. Mattson notified Mr. King that she was quitting because she could not perform her duties without pain to her wrist. Ms. Mattson intended for her last day to be October 24, 2007.

On Friday, October 12, Tom Tibbits, who was substituting for Mr. King, notified Ms. Mattson that the employer was ending her employment immediately, but that she would be paid wages for

her entire notice period. The employer did in fact pay wages to Ms. Mattson for her entire notice period. The employer had already trained an employee to take Ms. Mattson's spot.

Ms. Mattson established an "additional claim" for benefits that was effective December 16, 2007. The "additional claim" was based on a benefit claim year that commenced on February 18, 2007. Ms. Mattson received $2,241.00 in benefits for the period December 16, 2007 through February 16, 2008. At that start of the new benefit year, Ms. Mattson established a claim for benefits that was effective February 17, 2008. Ms. Mattson received $3,912.00 in benefits for the period of February 17, 2008 through May 10, 2008.

At the time Ms. Mattson established her new claim for benefits, she was reclassified as a "group 6" claimant. In other words, Ms. Mattson was classified as a claimant who worked in an occupation that relies upon submission of résumés for conducting work searches or a claimant who lived a great distance from available employment opportunities. Ms. Mattson in fact fits neither category.

Ms. Mattson has not worked since she separated from her employment with CNH America. Ms. Mattson continued under the care of a physician since separating from the employment with CNH America. Ms. Mattson has continued to experience pain in her left hand that prevents her from engaging in gainful employment.

The most recent available medical documentation is dated April 7, 2008, and concerns evaluation and treatment Ms. Mattson received from orthopedist Jerry Jochims, M.D. As of that date, Ms. Mattson continued to suffer from a left wrist sprain, impaired range of motion, impaired strength, and pain. In addition, Ms. Mattson continued to suffer from activities of daily living (ADLS) and impaired instrumental activities of daily living (IADLS). At the time of the evaluation, Ms. Mattson indicated that her pain level in the absence of exertion rate four on a scale of zero to ten and indicated that her pain level with activity rated eight on the same scale. At the time of the evaluation, Ms. Mattson indicated her treatment goals were decreased pain, improved strength, improved activities of daily living (ADLS) and to return to work.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1-d 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:
>
> d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Workforce Development rule 817 IAC 24.26(6) provides as follows:

> Separation because of illness, injury, or pregnancy.
>
> a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.
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> 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 the 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.

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 greater weight of the evidence in the record indicates that Ms. Mattson quit the employment in response to the employer's refusal to reasonably accommodate a medical condition that had been caused by the employment. One need only look at the medical documentation the employer submitted in Exhibit A to see the number of times Ms. Mattson placed the employer on notice that she could not perform assigned duties and to see the extent to which the employer pushed Ms. Mattson to perform work she was unable to perform due to her work-related medical condition. The nurses' note documenting the October 23, 2007 orthopedic appointment confirms that Ms. Mattson was justified in her complaints to the employer that she was unable to perform the work assigned to her without pain or further damage to her wrist. In light of the medical documentation, the weight of the evidence suggests that the employer pursued a course of action that created intolerable and detrimental work conditions that would have prompted a reasonable person to quit the employment. See 871 IAC 24.26(4). The employer was on notice well before Ms. Mattson tendered her resignation that Ms. Mattson would not continue in the employment if her medical condition was not reasonably accommodated.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Mattson quit the employment for good cause attributable to the

employer. Accordingly, Ms. Mattson is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Mattson.

The administrative law judge must now consider whether Ms. Mattson has been able to work and available for work since she established her claim for unemployment insurance benefits.

Iowa Code section 96.4-3 provides:

> An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:
>
> 3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(1)a provides:

> Benefits 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.
>
> (1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.
>
> a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

871 IAC 24.22(2) provides:

> Benefits 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.
>
> (2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment

> insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Workforce Development rule 871 IAC 24.23 provides, in relevant part, as follows:

> Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.
>
> 24.23(1) An individual who is ill and presently not able to perform work due to illness.
>
> 24.23(6) If an individual has a medical report on file submitted by a physician, stating such individual is not presently able to work.
>
> 24.23(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

The greater weight of the evidence indicates that Ms. Mattson has been unable to work and unavailable for since she separated from the employment at CNH America in October 2007. Since that time, Ms. Mattson has continued to suffer from pain and diminished use of her dominant hand that prevents her from working and has continued under the care of a physician. The evidence indicates that Ms. Mattson was erroneously classified as a "group 6" claimant at the beginning of the current benefit year. See 871 IAC 24.2(c). This erroneous classification made it possible for Ms. Mattson to continue her claim for benefits without making weekly in-person job contacts. Because Ms. Mattson has not been able to work and available for work, Ms. Mattson has been ineligible for benefits since she established the "additional claim" that was effective December 16, 2007.

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.
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> 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. Mattson has been unable to work and/or unavailable for work since she established the "additional claim" that was effective December 16, 2007, Ms. Mattson has been ineligible for the benefits she has received since that date. Ms. Mattson is overpaid $2,241.00 in benefits for the period December 16, 2007 through February 16, 2008. Ms. Mattson is overpaid $3,912.00 in benefits for the period of February 17, 2008 through May 10, 2008. The total overpayment amount is $6,153.00. Ms. Mattson must repay this amount to Iowa Workforce Development.

DECISION:

The Agency representative's March 25, 2008, reference 01, decision is modified as follows. The claimant quit the employment for good cause attributable to the employer. The claimant would be eligible for benefits, if she met all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant. The claimant has not met the able and available requirements of Iowa Code section 96.4(3) since December 16, 2007. The claimant is overpaid $2,241.00 in benefits for the period December 16, 2007 through February 16, 2008. The claimant is overpaid $3,912.00 in benefits for the period of February 17, 2008 through May 10, 2008. The total overpayment amount is $6,153.00. The claimant shall be reclassified as a "group 2" claimant and be required to demonstrate an active and earnest search for employment through weekly in-person job contacts.

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James E. Timberland
Administrative Law Judge

_____
Decision Dated and Mailed

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