

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT BROCKMANN
Claimant

APPEAL NO: 12A-UI-10592-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 03-14-12
Claimant: Appellant (4-R)

Iowa Code § 96.5-1 – Voluntary Quit
871 IAC 24.27 – Voluntary Quit of Part-Time Employment
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated July 25, 2012, reference 02, which held that the claimant was not eligible for unemployment insurance benefits because he voluntarily quit his job. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 28, 2012. The claimant participated in the hearing. Mike Goode, store manager, and Paul Hammell, store counsel, participated in the hearing on behalf of the employer. Department's Exhibit D-1 was admitted into evidence.

ISSUE:

The issue is whether the claimant's appeal is timely and whether his voluntary separation from his part-time employment qualifies him to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: A disqualification decision was mailed to the claimant's last known address of record on July 25, 2012. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by August 4, 2012. That date fell on a Saturday, so the appeal was due August 6, 2012. The appeal was not filed until August 31, 2012, which is after the date noticed on the disqualification decision. The claimant received three decisions from Workforce and sent an appeal letter in a timely fashion, but the Appeals Section did not apply that appeal letter to this matter. Due to the fact the claimant believed he filed his appeal in a timely manner, and was not informed otherwise until the deadline to file an appeal passed, and the confusion surrounding the situation, the administrative law judge finds the claimant's appeal is timely.

The claimant was employed as a part-time morning stock employee for Menard from March 16, 2011 through July 5, 2012. The claimant had minor surgery on his knee and was no longer able to perform the duties required by his position at Menard. Consequently, he was required to voluntarily quit his job without good cause attributable to the employer.

The claimant was a full-time employee for West Central Mental Health until he was laid off in March 2011. He is able and available to perform work in areas that do not require heavy manual labor.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits.

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.

871 IAC 24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

The claimant has the burden of proving that the voluntary quit was for a good reason that would not disqualify him. Iowa Code section 96.6-2. The claimant voluntarily left his employment due to a minor knee surgery that prevented him from being able to perform his job duties with Menard. The separation was not attributable to the employer. However, an individual who quits part-time employment without good cause, yet is otherwise monetarily eligible based on wages paid by other base-period employers, shall not be disqualified for voluntarily quitting the part-time employment. Benefit payments shall not be based on wages paid by the part-time employer and charges shall not be assessed against the part-time employer's account. Once the individual has met the requalification requirements, the wages paid from the part-time employment can be used for benefit payment purposes. 871 IAC 24.27.

Based on this regulation, this matter is remanded to the Claims Section to determine whether the claimant is monetarily eligible to receive unemployment insurance benefits when the wage credits the claimant earned while working for the employer are not used in determining the claimant's monetary eligibility or his maximum weekly benefit amount.

DECISION:

The unemployment insurance decision dated July 25, 2012, reference 02, is modified in favor of the claimant. The claimant voluntarily quit his part-time employment for disqualifying reasons. Therefore, the employer's account will not be charged. This matter is remanded to the Claims Section to determine whether the claimant is monetarily eligible to receive unemployment insurance benefits and to determine what his maximum weekly benefit amount is when the wage credits the claimant earned from Menard are not taken into consideration to determine these two issues.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw