

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DONALD G THORNTON**  
Claimant

**APPEAL NO. 14A-UI-07972-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MULTIBRAND NE INC**  
Employer

**OC: 06/29/14**  
**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 July 24, 2014, 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 has been discharged for no disqualifying reason. After due notice was issued, a hearing was held on August 21, 2014. Claimant Donald Thornton participated. Holly Lines represented the employer and presented additional testimony through Samuel Pruett. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One, Three through Five, and Seven through Eleven into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview.

**ISSUES:**

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

Whether the claimant was overpaid benefits.

Whether the claimant must repay benefits.

Whether the employer's account may be charged for benefits already paid or for future benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Donald Thornton was employed by Multibrand NE, Inc. as a full-time installation and service technician from 2011 and last performed work for the employer on May 8, 2014. Mr. Thornton's immediate supervisor was Travis Bowling, Tech Supervisor. On or about May 8, 2014 Mr. Thornton notified Mr. Bowling that he was having personal problems that prevented him from coming to work. Mr. Thornton told Mr. Bowling that his wife had left him and that he had

small children with no one available to care for them. Mr. Bowling recommended that Mr. Thornton submit a request for a leave of absence. Mr. Thornton submitted the leave request and was approved for a personal leave. At the time the employer approved the personal leave, Mr. Thornton and the employer both understood that Mr. Thornton was expected to return to work on June 2, 2014. Mr. Thornton did not return to work on June 2, 2014. Instead, Mr. Thornton notified the employer that he needed to continue off work because his mother was sick and in the hospital. The employer provided Mr. Thornton with Family and Medical Leave Act (FMLA) materials and told Mr. Thornton that he would have to submit medical certification to support the need for the leave by June 17, 2014, 15 days from the date of the application. Mr. Thornton never provided the employer with medical certification materials. Until June 17, 2014 Mr. Thornton continued to remotely access the employer's time-reporting system on a daily basis to document that he had worked zero hours that day. Mr. Thornton then discontinued the daily reporting. The June 17, 2014 deadline for submission of the medical certification materials came and went. Thereafter, the employer made multiple attempts to contact Mr. Thornton without success. Samuel Pruett, General Manager, stopped by Mr. Thornton's home, but was not able to make contact with Mr. Thornton. The employer left voicemail messages for Mr. Thornton, but Mr. Thornton did not response to those messages. The employer waited until July 1, 2014 to hear from Mr. Thornton, but heard nothing. The employer then documented a separation from the employment.

Mr. Thornton established a claim for benefits that was effective June 29, 2014. Mr. Thornton has thus far received \$5,010.00 in benefits for the ten-week period of June 29, 2014 through September 6, 2014.

The employer participated in the fact-finding interview that occurred on July 23, 2014. Holly Lines, Unemployment Insurance Administrator, provided a verbal statement to the Claims Deputy. That statement echoes the testimony the employer provided at the appeal hearing. The employer also provided several documents for the fact-finding interview that indicated a separation based on the claimant's failure to return to work or make contact with the employer.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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.

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.

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. 871 IAC 24.22(2)(j). If at the end of a period of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits. 871 IAC 24.22(2)(j)(1). On the other hand, 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. 871 IAC 24.22(2)(j)(2).

The evidence in the record indicates that Mr. Thornton voluntarily quit the employment for personal reasons and without good cause attributable to the employer. Mr. Thornton failed to return to work on June 2, 2014 at the end of the personal leave period the employer had approved. Mr. Thornton alleged to the employer on or about June 2, 2014 that he needed to continue off work because his mother was ill. Mr. Thornton's failure to provide any medical documentation to the employer to support that assertion, his failure to make any further contact with the employer in response to the employer's several attempts, his failure to present supporting documentation to Workforce Development, his purported loss of his cell phone, and his purported destruction of the alleged medical documentation, altogether indicate that whatever was going on with Mr. Thornton's mother, that was not the basis for Mr. Thornton's continued absence.

Mr. Thornton voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Thornton 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 employer's account will not be charged for benefits yet to be paid to Mr. Thornton.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later determined to be ineligible for the 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.

The claimant received benefits, but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid \$5,010.00 in benefits for the ten-week period of June 29, 2014 through September 6, 2014. Because the employer participated in the fact-finding interview, the claimant is required to repay the overpaid benefits and the employer will not be charged for benefits already paid to the claimant.

**DECISION:**

The Claims Deputy's July 24, 2014, reference 01, decision is reversed. The claimant voluntarily quit the employment 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, provided he is otherwise eligible. The employer's account shall not be charged for benefits already paid or for future benefits. The claimant is overpaid \$5,010.00 in benefits for the ten-week period of June 29, 2014 through September 6, 2014. The claimant must repay that amount.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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