

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TEON K ADAMS
Claimant

APPEAL NO. 09A-UI-02083-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS NIC
Employer

**Original Claim: 01/04/09
Claimant: Respondent (2-R)**

Iowa Code section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 5, 2009, reference 04, decision that allowed benefits. After due notice was issued, a hearing was held on March 12, 2009. Claimant did not participate. Sarah Fiedler, Claims Administrator, represented the employer. Exhibit One was received into evidence.

Claimant Teon Adams had provided a telephone number for the hearing: 319-351-2735. However, at the scheduled time of the hearing, Mr. Adams was not available at the number he had provided. The administrative law judge made two attempts to reach the claimant and let the phone ring ten times each time. No one answered and there was no answering machine. The administrative law judge notes that the above phone number is the same number the administrative law judge used to contact the claimant on March 3, 2009, the date when the matter was originally set for hearing.

ISSUE:

Whether the claimant separated from the employer 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: The employer is a staffing agency. Teon Adams commenced his employment with Team Staffing Solutions on September 30, 2008 and worked in one assignment. The assignment was a full-time ongoing assignment at Bochner Chocolates in Iowa City. The hours of the employment were 9:00 a.m. to 6:00 p.m., Monday through Friday, with some weekend overtime. Mr. Adams did not complete the assignment. Mr. Adams last appeared and performed work in the assignment on October 30, 2008. Mr. Adams left work early at 2:00 p.m. This corresponded to the afternoon break. Mr. Adams went to Team Staffing Solutions and collected his paycheck. At 4:22 p.m., a representative of Bochner Chocolates contacted Team Staffing Services to advise that Mr. Adams had not returned after the break. Mr. Adams did not return to work and did not make further contact with Team Staffing Solutions or Bochner Chocolates. The employer continued to have work available for Mr. Adams.

REASONING AND CONCLUSIONS OF LAW:

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.

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 evidence in the record indicates that Mr. Adams voluntarily quit the employment for personal reasons and not for good cause attributable to the employer. Mr. Adams indicated his intention to quit the employment by failing to return to work on the afternoon of October 30, 2008, by failing thereafter to return to the assignment, and by failing to make further contact with the staffing agency or the client business. Mr. Adams 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 paid to Mr. Adams.

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 February 5, 2009, reference 04, 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.

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