

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THEODORE S HENNING
Claimant

APPEAL NO. 07A-UI-10329-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

USA STAFFING INC
Employer

OC: 09/30/07 R: 02
Claimant: Respondent (1-R)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 31, 2007, reference 01, that concluded the claimant had completed a temporary work assignment and was eligible for unemployment insurance benefits. A telephone hearing was held on November 27, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness. Stacey Tinkham participated in the hearing on behalf of the employer with a witness, Cristin Adams. The record was left open for the employer to send in proof that the claimant had worked on October 3, 2006. The employer sent the work ticket and endorsed cash check, which was marked as Exhibit One and sent to the claimant for objections. The claimant objected on the basis that he never worked October 3 and never cashed the check. He presented a copy of this Iowa Identification card for signature comparison purposes. The letter and copy of the ID card was sent to the employer's representative for objections. No objections were received. Exhibits One and A are admitted into evidence. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show he filed a claim for unemployment insurance benefits effective July 16, 2006, and reported wages for that week of \$96.00. He reported wages of \$200.00 for the week ending August 5 and \$600.00 for the week ending August 12, 2006, and then stopped filing claims. He reopened his claim for benefits on October 3, 2006, reporting he had worked for Heartland Finishers from July 31, 2006, to September 29, 2006. He did not report earning any wages during the week ending October 7, 2006. The records show the employer reported to Iowa Workforce Development wages paid to the claimant during 2006 as follows: \$811.00 for the second quarter, \$58.00 for the third quarter, and \$40.00 for the fourth quarter. If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. When the claimant was hired, he signed a statement that he would be

considered to have voluntarily quit employment if he did not contact the employer within three working days after the completion of a job assignment and request a new assignment.

The claimant worked for the employer from June 2, 2006, to July 22, 2006. He left employment to accept full-time employment as a union carpenter with Heartland Finishers starting on July 31, 2006. He worked for Heartland Finishers until September 29, 2006.

The claimant filed a new claim for unemployment insurance benefits effective July 16, 2006, and reported wages for that week of \$96.00. He reported wages of \$200.00 for the week ending August 5 and \$600.00 for the week ending August 12, 2006, and then stopped filing claims. He reopened his claim for unemployment insurance benefits on October 3, 2006, reporting he had worked for Heartland Finishers from July 31, 2006, to September 29, 2006.

On October 3, 2006, the claimant accepted a five-hour assignment to work for Eco-Tech Corporation on a concrete project. He was told that the work involved doing cleanup work on the project. When he report to work, he discovered that he was being asked to tie rebar along with nonunion workers, which he considered to taking work from union steelworkers. He worked for five hours and earned \$40.00 in gross wages. He quit the employment because he believed the employer had misrepresented the work involved. He thought he could be expelled from his union for doing the rebar work. He did not report earning any wages during the week ending October 7, 2006. He cashed the check issued on October 11, 2006, for his wages.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer.

Iowa Code section 96.5-1-a 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:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant left work on July 22, 2006, to accept employment with Heartland Finishers and performed services in that new employment. The claimant is qualified to receive unemployment insurance benefits based on this separation from employment with the employer, provided he is otherwise eligible. Pursuant to the statute, the employer's account will not be charged for benefits paid based on the wages paid to him during the second and third quarters of 2006.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. I believe the claimant worked five hours on October 3, 2006, and received and cashed the check for the wages. It is implausible that a ticket would be

completed in the claimant's name, hours would be recorded on it, a check would be issued based on the ticket payable to the claimant, and the check would be endorsed and cashed, if the claimant had not worked the five hours on October 3. The claimant questions the signature, which is more or less scribbled on the check, but it is not uncommon for someone to imprecisely sign a check in a hurry or because of the surface they are writing on. The claimant has either forgotten because this happened over a year ago or he does not want to admit working on October 3, 2006, because he failed to report his earnings on his claim for that week.

The fact that I do not believe the claimant's testimony about not working on October 3, 2006, does not mean the claimant is disqualified based on his quitting employment, because I still have to decide if he had good cause to quit. He quit because he was told he would be doing cleanup work and ended up being assigned to tie rebar, which he believed would affect his union status. The employer does not offer any information to contradict this testimony. Under 871 IAC 24.26(23), a claimant who leaves work because the type of work was misrepresented at the time of acceptance of the work assignment is considered to have good cause attributable to the employer to quit employment.

The claimant is not disqualified from benefits based on his separation from employment on October 3, 2006. The employer will be subject to charge for benefits based on the \$40.00 in wages paid during the fourth quarter of 2006.

DECISION:

The unemployment insurance decision dated October 31, 2007, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The employer's account will not be charged for benefits paid based on the wages paid to him during the second and third quarters of 2006. The employer will be subject to charge for benefits based on the \$40.00 in wages paid to the claimant during the fourth quarter of 2006.

The issue of whether the claimant is subject to disqualification because he failed to report wages during the week ending October 6, 2006, is remanded to the Agency to investigate and make a determination.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw