

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

DONNA L NUPP
Claimant

APPEAL 22A-UI-09464-DS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES IOWA INC
Employer

**OC: 03/20/22
Claimant: Respondent (2)**

Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment
Iowa Admin. Code r. 871-24.26(19) – Voluntary Quit
Iowa Code Section 96.3(7) – Overpayment of Benefits

STATEMENT OF THE CASE:

On April 15, 2022, Temp Associates – Iowa Inc., filed an appeal from the unemployment insurance decision dated April 12, 2022, Reference 02 that allowed benefits, finding the claimant requested a new job assignment within three days of her assignment ending on March 17, 2022. Notice of hearing was mailed to the parties' last known addresses of record for a telephone hearing to be held at 2:00 p.m. on May 27, 2022, at Des Moines, Iowa. The claimant participated personally. The employer participated through Chelsey Haynes, Branch Manager. The administrative law judge took official notice of the administrative record.

ISSUES:

Was the claimant's separation a voluntary quit without good cause attributable to employer?
Did the claimant make a timely request for a new job assignment?
Was the claimant overpaid benefits?
Should claimant repay those benefits and/or should the employer be charged based upon its participation in the fact-finding interview?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant was employed full-time by Temp Associates - Iowa, Inc., a temporary employment firm, from January 18, 2022 until her employment ended on March 18, 2022. The claimant's sole assignment was as a Shipping and Assembly worker at Traffix Devices, Inc. On March 15, 2022, the employer notified the claimant that her assignment at Traffix Devices, Inc., had ended due to attendance issues. The claimant hung up on the employer when she was advised that her assignment at Traffix Devices, Inc., had ended. The claimant did not request a new assignment.

The employer has a policy that requires employees to request a new assignment within three working days of completing an assignment. Every employee signs a form during orientation

indicating that they know they have to contact the employer within three days of an assignment ending for a new assignment.

The administrative record shows claimant has received \$4,580.00 in for the claim weeks from 3/20/22 through 6/25/22. The employer, through Chelsey Haynes, attempted to participate in the fact-finding interview, but was not called by IWD. The employer sent an email message to IWD advising that they had not been called, but still did not receive further communication.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the separation was without good cause attributable to the employer. Benefits are denied.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Code § 96.5(1)(j) provides:

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:

j. (1) The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.

(2) To show that the employee was advised in writing of the notification requirement of this paragraph, the temporary employment firm shall advise the temporary employee by requiring the temporary employee, at the time of employment with the temporary employment firm, to read and sign a document that provides a clear and concise explanation of the notification requirement and the consequences of a failure to notify. The document shall be separate from any contract of employment and a copy of the signed document shall be provided to the temporary employee.

(3) For the purposes of this paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(b) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

Iowa Admin. Code r. 871-24.26(19) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of each temporary assignment so they may be reassigned and continue working. The plain language of the statute allows benefits for a claimant "who notifies the temporary employment firm of completion of an assignment and who seeks reassignment."

Here, the claimant did not request a new assignment, and is therefore not eligible for benefits. The claimant failed to comply with Iowa Code section 96.5(1)j, and she voluntarily quit employment without good cause attributable to the employer. The separation is disqualifying, and benefits are denied.

Iowa Code § 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.
 - a. 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.

Gross wages must be reported to Iowa Workforce Development as part of the weekly claim for the week in which the wages were earned. See Iowa Administrative Code rules 871-24.2(1)(g)(3)(2) and 871-24.2(2)(e)(2).

Iowa Administrative Code rule 871-24.18 provides as follows:

Wage-earnings limitation. An individual who is partially unemployed may earn weekly a sum equal to the individual's weekly benefit amount plus \$15 before being disqualified for excessive earnings. If such individual earns less than the individual's weekly benefit amount plus \$15, the formula for wage deduction shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the lower multiple of one dollar, in excess of one-fourth of the individual's weekly benefit amount.

An employer is to be charged for overpaid benefits if "the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. . ." Iowa Code § 96.3(7)(b)(1)(a).

Here, the employer responded to the notice of a fact-finding interview with information and the telephone number at which the proper representatives could be reached for the fact-finding interview. Benefits were paid, but not because the employer failed to respond timely or adequately to the agency's request for information relating to the payment of benefits. Instead, benefits were paid because employer did not receive a call from the agency.

DECISION:

The April 12, 2022, Reference 02, decision is REVERSED. The claimant's separation was a voluntary quit without good cause attributable to the employer. Unemployment insurance benefits shall be withheld with regard to this employer until such time as claimant is deemed eligible. The claimant has been overpaid \$4,580.00 in regular benefits and is obligated to repay those benefits.



David J. Steen
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

August 31, 2022
Decision Dated and Mailed

djs/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.