

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**THOMAS A SMITH**  
Claimant

**APPEAL 18A-UI-00657-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**QPS EMPLOYMENT GROUP INC**  
Employer

**OC: 12/10/17  
Claimant: Respondent (1)**

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Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment  
Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer/appellant filed an appeal from the January 5, 2018 (reference 01) unemployment insurance decision that allowed benefits to claimant because he did notify the temporary employment firm within three working days of the completion of his last assignment and requested additional work. The parties were properly notified of the hearing. A telephone hearing was held on February 7, 2018. The claimant, Thomas A. Smith, participated personally. The employer, QPS Employment Group Inc., participated through witnesses Nicholas Selby and Mai Xiong. Employer's Exhibit 1 was admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

**ISSUES:**

Did the claimant voluntarily quit by not reporting for an additional work assignment within three business days of the end of the last assignment?  
Did claimant voluntarily quit the employment with good cause attributable to employer?  
Was the claimant discharged for disqualifying job-related misconduct?  
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can any charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was a temporary employee of a temporary employment firm. Claimant began his employment on April 12, 2017. On April 10, 2017, the claimant completed paperwork with the employer, including signing the employer's three-day reassignment policy. See Exhibit 1.

Claimant was assigned to work at Boylers Ornamental Iron ("Boylers") on a full-time basis. His last day physically worked on this job assignment at Boylers was Friday, August 11, 2017.

Claimant contacted Mr. Selby on Friday, August 11, 2017 following his work shift and requested additional work from employer. This was within three working days after the assignment ended. No further work was available to claimant.

Claimant received benefits in the amount of \$3,008.00 for the eight weeks between December 10, 2017 and February 3, 2018. Employer did participate in the fact-finding interview.

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

For the reasons that follow, the administrative law judge concludes the separation was not disqualifying. Benefits are allowed, provided claimant is otherwise eligible.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the Administrative Law Judge finds that claimant's testimony is more credible than Mr. Selby's testimony.

Iowa Code § 96.5-(1)-j 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:

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.

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for and seeking work at the end of the temporary assignment. Since claimant contacted the employer within three working days of the notification of the end of the assignment, requested reassignment, and there was no work available, no disqualification is imposed.

As such, the claimant complied with Iowa Code section 96.5(1)j and he did not voluntarily quit without good cause attributable to the employer. The separation is not disqualifying. Benefits are allowed, so long as claimant is otherwise eligible. Because benefits are allowed, the issues of overpayment and chargeability are moot.

**DECISION:**

The January 5, 2018 (reference 01) unemployment insurance decision is affirmed. The claimant's separation from employment was not disqualifying. Benefits are allowed, provided he is otherwise eligible. The employer's account may be charged for benefits paid.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/rvs