

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RUBEN SIMMS

Claimant

APPEAL NO: 09A-UI-03217-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAMBRIDGE TEMPOSITIONS INC

Employer

OC: 10/26/08

Claimant: Respondent (2/R)

Iowa Code § 96.5-1 - Voluntary Quit

Iowa Code § 96.7(2)a(6) - Appeal from Statement of Charges

Iowa Code § 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

Cambridge Tempositions (employer) appealed from the fourth quarter 2008 statement of charges, dated February 9, 2009, which showed the employer's account was being charged for benefits paid to Ruben Simms (claimant). A decision was issued on February 24, 2009, reference 02, which held the employer failed to file a timely protest regarding the claimant's separation of employment on August 4, 2008 and no disqualification of unemployment insurance benefits was imposed. The employer appealed that decision. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 25, 2009. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which he could be contacted, and therefore, did not participate. The employer participated through Stephanie Matteson, Account Manager. Exhibit D-1 was admitted into evidence. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

The first issues to be determined are whether the employer's appeal from its quarterly statement of charges is timely and whether its protest in this matter was timely, and if so, whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: A notice of claim was mailed to the employer's address of record on October 30, 2008 and the protest was due on November 10, 2008. The employer received the notice of claim on November 3, 2008 and faxed its protest on that same date. Iowa Workforce never received the employer's protest.

The fourth quarter 2008 statement of charges was mailed to the employer on February 9, 2009, and the employer received it. The employer notified Iowa Workforce Development on February 12, 2009 that the original notice of claim had been received and a protest was faxed on November 3, 2008.

The claimant was employed as a temporary employee since August 3, 2007. His most recent assignment was with Mediacom. The claimant voluntarily quit his employment due to loss of transportation. Continuing work was available.

The claimant filed a claim for unemployment insurance benefits effective October 26, 2008 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.6-2 provides in pertinent part:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant.

Iowa Code § 96.7-2-a(6) provides:

2. Contribution rates based on benefit experience.
 - a. (6) Within forty days after the close of each calendar quarter, the department shall notify each employer of the amount of benefits charged to the employer's account during that quarter. The notification shall show the name of each individual to whom benefits were paid, the individual's social security number, and the amount of benefits paid to the individual. An employer which has not been notified as provided in section 96.6, subsection 2, of the allowance of benefits to an individual, may within thirty days after the date of mailing of the notification appeal to the department for a hearing to determine the eligibility of the individual to receive benefits. The appeal shall be referred to an administrative law judge for hearing and the employer and the individual shall receive notice of the time and place of the hearing.

The employer received the notice of claim and filed a protest in a timely manner on November 3, 2008 but the agency did not receive the fax transmission. The employer was unaware that charges were made to its account on behalf of the claimant until it received the fourth quarterly statement of charges for 2008. The employer responded within three days of that notice to protest the payment of benefits to the claimant. Therefore, the protest shall be accepted as timely.

The substantive issue in this case is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer or if the employer discharged him for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa

Ct. App. 1992). The claimant voluntarily quit his employment due to loss of transportation. The law presumes it is a quit without good cause attributable to the employer when an employee leaves due to lack of transportation. 871 IAC 24.25(1).

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The claimant has not satisfied that burden. Benefits are denied.

Iowa Code § 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 § 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 could 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 employer's protest is timely. The unemployment insurance decision dated February 24, 2008, reference 02, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs