

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HEATHER TRASK
Claimant

L A LEASING INC
Employer

APPEAL 17A-UI-04706-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/26/17
Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment
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:

L A Leasing, Inc. (employer) filed an appeal from the April 26, 2017, reference 02, unemployment insurance decision that allowed benefits based upon the determination Heather Trask (claimant) worked until the completion of her temporary assignment and notified the employer within three days of the completion of the end of her assignment. The parties were properly notified about the hearing. A telephone hearing was held on May 22, 2017. The claimant did not answer when called at the phone number registered for the hearing. The employer participated through UI Benefits Administrator Colleen McGuinty, Account Manager Ali Mangelsdorf, and Account Manager Carrie Balcaen. Employer's Exhibit 1 was received. Official notice was taken of the administrative record, specifically the fact-finding documents.

ISSUES:

Did the claimant quit by not reporting for additional work assignments within three business days of the end of the last assignment?
Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived?
Can 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 employed in a temporary full-time position as a Laborer with the employer's client HC Duke and Sons beginning on October 24, 2016. The employer has a policy that was given to the claimant when she was hired stating she needed to contact the employer and request a new assignment within three days of the end of her assignment.

The claimant's assignment ended on February 22, 2017, due to cell phone usage and a failure to wear safety glasses. Account Manager Carrie Balcaen notified the claimant that her assignment had ended. The claimant disputed the reason her assignment ended. Balcaen told

the claimant that she would need to come to the office to sign a written warning and again the claimant disputed the allegations. The claimant did not request a new assignment until March 1, 2017.

The administrative record reflects that the claimant has received unemployment benefits in the amount of \$3,936.00, since filing a claim with an effective date of February 26, 2017, for the 12 weeks ending May 20, 2017. The administrative record also establishes that the employer did not participate in the fact-finding interview, but did provide documents that, without rebuttal from the claimant, would have resulted in disqualification from benefits. The notice of fact-finding interview was sent to the employer on April 11, 2017 and was received within two to three days of mailing by the employer. The notice states, at the top, "Review your contact information and contact the agency if it is incorrect." (Employer's Exhibit 1.) The employer did not review its contact information on the notice and the phone number on the interview notice was incorrect by one digit. However, the employer did provide a statement on its protest that the claimant did not notify contact it after her assignment ended and provide a copy of its three day notice requirement.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer.

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.

Iowa Admin. Code r. 871-24.26(15) provides:

Employee of temporary employment firm.

a. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm within three days of completion of an employment assignment and seeks reassignment under the contract of hire. The employee must be advised by the employer of the notification requirement in writing and receive a copy.

b. The individual shall be eligible for benefits under this subrule if the individual has good cause for not contacting the employer within three days and did notify the employer at the first reasonable opportunity.

c. Good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business; blinding snow storm; telephone lines down; employer closed for vacation; hospitalization of the claimant; and other substantial reasons.

d. Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer, or any other currently acceptable means of communications. Working days means the normal days in which the employer is open for business.

The purpose of the statute is to provide notice to the temporary agency employer that the employee 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 employment assignment *and* who seeks reassignment." (Emphasis supplied.) In this case, the employer had notice of the claimant's availability because it notified her of the end of the assignment but she did not request another assignment. Benefits are denied.

Because the claimant's separation was disqualifying, benefits were paid to which she was not entitled. The unemployment insurance law 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. Iowa Code § 96.7. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. Iowa Admin. Code r. 871-24.10(1). The employer will not be charged for benefits if it is determined that they did participate in the fact-finding interview. Iowa Code § 96.3(7), Iowa Admin. Code r. 871-

24.10. An employer will be deemed to have participated via documentation if, in the case of a voluntary separation, it provides information with the stated reason for the quit. Iowa Admin. Code r. 871-24.10(1).

In this case, the claimant has received benefits but was not eligible for those benefits. The employer's protest states the claimant did not check back in for more employment opportunities and it provided the signed three day notice policy it provided to the claimant. Since the employer did participate in the fact-finding interview via documentation, the claimant is obligated to repay to the agency the benefits she received and the employer's account shall not be charged.

DECISION:

The April 26, 2017, reference 02, unemployment insurance decision is reversed. The claimant's separation was not attributable to the employer. Benefits are withheld until such time as she works in and has been paid for wages equal to ten times her weekly benefit amount, provided she is otherwise eligible.

The claimant has been overpaid unemployment insurance benefits in the amount of \$3,936.00, and is obligated to repay the agency those benefits. The employer participated in the fact-finding interview and its account shall not be charged.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/rvs