IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

STEPHON WASHINGTON
Claimant

APPEAL NO. 09A-UI-07631-BT

ADMINISTRATIVE LAW JUDGE
DECISION

TEAM STAFFING SOLUTIONS INC
Employer

Original Claim: 04/12/09
Claimant: Respondent (2/R)

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Team Staffing Solutions, Inc. (employer) appealed an unemployment insurance decision dated May 15, 2009, reference 01, which held that Stephon Washington (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 11, 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 Michael Black, Human Resources Director. 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.

ISSUE:

The issue is 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 having considered all of the evidence in the record, finds that: The claimant began working as temporary employee on December 15, 2008 and was assigned to CD Technical. He worked 37.88 hours for the week ending December 21, 2008. If an employee is going to be absent, he is required to contact both the employer and the client. The claimant was a no-call/no-show on December 22, 2008, when he failed to report to work and did not call either the employer or the client. The employer called the claimant on December 22, 2008 and he reported he could not work due to lack of transportation.

The employer did not hear from the claimant after that date until May 2009, when the employer called to offer the claimant a job at Coles Quality Foods. The claimant worked 2.58 hours on May 14, 2009 and then walked off the job. The assignment was long-term and he had the potential to be hired as a full-time employee.

The claimant filed a claim for unemployment insurance benefits effective April 12, 2009 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits.

Iowa Code § 96.5-1 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.

871 IAC 24.25(1) provides:

> Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:
>
> (1) The claimant's lack of transportation to the work site unless the employer had agreed to furnish transportation.

The claimant voluntarily quit his employment on December 22, 2008 due to lack of transportation. He subsequently went to work for the employer on May 14, 2009 but walked off the job with no explanation. 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. He has not satisfied that burden and 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 unemployment insurance decision dated May 15, 2009, reference 01, 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.

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Susan D. Ackerman
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw