

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JEFFREY T GRAFTON
209 W 5TH ST APT 301
WATERLOO IA 50701

LABOR READY MIDWEST INC
C/O TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-02403-DT
OC: 01/23/05 R: 03
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving
Section 96.5-1-j – Temporary Employment
871 IAC 24.26(19) – Temporary Employment
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

Labor Ready Midwest, Inc. (employer) appealed a representative's February 24, 2005 decision (reference 01) that concluded Jeffrey T. Grafton (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 24, 2005. The claimant participated in the hearing. Rick Bartlett appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the

administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment?

FINDINGS OF FACT:

The employer is a temporary staffing agency. The claimant began taking assignments through the employer on November 13, 2001. He worked a few weeks for the employer in 2001, about four days in 2003, and then began regularly working through the employer in July 2004. He reported in for assignments on a daily basis, and between July 1, 2004 and October 18, 2004, the claimant worked 55 days. The last assignment he worked was a 4.5-hour assignment on October 18, 2004. On October 19, 2004, he reported in for work and was given an assignment to begin at 9:00 p.m. that night at a retail store at a local mall. The claimant did not work the assignment, and did not report back to the employer within three days to seek another assignment.

The claimant asserted that the reason he did not work the assignment was that he attempted to report to the mall at 9:00 p.m. but the doors were locked, and that he subsequently did report back to the employer to explain the situation on October 20, 2004. However, when the claimant ultimately recontacted the employer to seek a new assignment on January 11, 2005, he advised Mr. Bartlett, the branch manager, that the reason he had not worked the assignment was because he was in jail. The claimant's testimony was less than credible; during his own testimony, the time of his incarceration varied from 20 days, to 30 days, to 45 days, to 60 days, to being on or about October 23, 2005 until shortly before January 11, 2005. The employer provided credible rebuttal evidence that the claimant was arrested on October 19, 2004 and was in jail until shortly before January 11, 2005.

The claimant established a claim for unemployment insurance benefits effective January 23, 2005. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$1,136.00.

REASONING AND CONCLUSIONS OF LAW:

The essential question in this case is whether there was a disqualifying separation from employment.

Iowa Code §96.5-1-j provides that 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 is deemed a voluntary quit. The intent of the statute is to avoid situations where a temporary assignment has ended and the claimant is unemployed, but the employer is unaware that the claimant is not working and could have been offered an available new assignment to avoid any liability for unemployment insurance benefits. The administrative law judge concludes that this requirement to report back after an assignment would also apply to a situation where, as here claimed by the claimant, a good faith but failed attempt was made to work the assignment.

Here, the claimant had a regular daily pattern of employment with the employer that was disrupted because of his incarceration. An employee is deemed to have left without good cause if the employee is absent from work due to becoming incarcerated. 871 IAC 24.25(16). The

employer was not under any requirement to accept the claimant back for further work assignments upon the claimant's release from jail and making himself available as of January 11, 2005. Benefits are denied.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's February 24, 2005 decision (reference 01) is reversed. The claimant is deemed to have voluntarily left his employment without good cause attributable to the employer. As of October 19, 2004, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,136.00.

ld/kjf