

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUAN M ACEVES

Claimant

APPEAL NO. 10A-UI-16344-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC

Employer

OC: 10/24/10

Claimant: Respondent (2-R)

Section 96.5(1) Quit

STATEMENT OF THE CASE:

The employer, Team Staffing, filed an appeal from a decision dated November 19, 2010, reference 01. The decision allowed benefits to the claimant, Juan Aceves. After due notice was issued, a hearing was held by telephone conference call on January 18, 2011. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Claims Administrator Sarah Fielder.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Juan Aceves was employed by Team Staffing from November 3, 2009 until October 21, 2010. He had only one assignment during that time at Grain Processing. On October 17, 2010, the claimant notified Grain Processing he would not be in to work but would return October 20, 2010. But, on that day, he was no-call/no-show to work. The next day, the client company notified Team Staffing it did not want Mr. Aceves to return because he had had a lot of absenteeism during the assignment.

Mary Kirchner of Team Staffing called the claimant on October 21, 2010, and said Grain Processing did not want him to return. She then asked him if he wanted another assignment and he said he did not. He was considered a voluntary quit as of that day.

Juan Aceves has received unemployment benefits since filing a claim with an effective date of October 24, 2010.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

The claimant quit because he refused to continue working for the employer. He was offered the opportunity to be placed on other assignments but declined. Mr. Aceves did not participate in the hearing to provide any evidence or testimony as to his reasons for quitting and has therefore not met his burden of proof to establish he had good cause attributable to the employer. He is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

- a. 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.

- b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

- (2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of November 19, 2010, reference 01, is reversed. Juan Aceves is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw