

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JEREMIAH SCHWAKE
Claimant

**L A LEASING
SEDONA GROUP**
Employer

APPEAL NO. 14A-UI-02242-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/22/13
Claimant: Respondent (2/R)

Iowa Code § 96.5-1-j - Voluntary Quit of Temporary Employment
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Sedona Group (claimant) appealed an unemployment insurance decision dated February 18, 2014, (reference 02), which held that Jeremiah Schwake (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 March 20, 2014. The claimant participated in the hearing. The employer participated through Colleen McGuinty, Unemployment Benefits Administrator and Krista Majewski, Account Manager. Employer's Exhibit One was admitted into evidence.

ISSUE:

The issues are whether the claimant is disqualified benefits, whether he was overpaid unemployment insurance benefits, whether he is responsible for repaying the overpayment and whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary employment agency and the claimant was initially hired on September 7, 2012. At the time of hire, he signed an availability statement which advised him of the requirement to check in for additional work after the completion of an assignment. The employer requires employees to check in within three working days after an assignment ends to provide the employer notification of the claimant's availability and failure to do so would be considered as a voluntary quit. The claimant was given a copy of the availability statement, which is not part of the application or contract of employment.

The claimant's last assignment ended on May 15, 2013. He did not check in with the employer for additional assignments until June 20, 2013. The claimant was considered to have voluntarily quit.

The claimant filed a claim for unemployment insurance benefits effective December 22, 2013, and has received benefits after the separation from employment. The employer submitted written documentation for the fact-finding interview and provided contact information for rebuttal purposes.

REASONING AND CONCLUSIONS OF LAW:

The 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. Iowa Code § 96.5-1. The employer herein is a temporary employment agency and temporary employment agencies are governed by Iowa Code §96.5-1-j, which places specific restrictions on both the employer and the employee with regard to unemployment insurance benefits.

To be disqualified from receiving benefits, at the time of hire the employer must advise the individual in writing of the three-day notification rule and the employer did so in this case. The employer must also notify the individual that he may be disqualified from receiving unemployment insurance benefits if he fails to notify the employer. Iowa Code § 96.5-1-j. The claimant was given a copy of the availability statement which advised him that failure to contact the employer after the end of an assignment could result in a loss of unemployment benefits.

The claimant knew or should have known he was required to contact the employer after the completion of his assignment so the employer knew whether he was available for additional assignments. He did not contact the employer within three days after the end of his assignment on May 15, 2013. The claimant has not established good cause for his failure to do so. He did not satisfy the requirements of Iowa Code § 96.5-1-j and is disqualified from receiving unemployment insurance benefits

Because the claimant has been deemed ineligible for benefits, any benefits he has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met: 1) there was no fraud or willful misrepresentation by the claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer's failure to participate, that employer's account continues to be subject to charge for the overpaid amount. See Iowa Code § 96.3-7.

In the case herein, the benefits were not received due to fraud or willful misrepresentation and the employer witness did not personally participate in the fact-finding interview. However, the employer representative sent in detailed written documentation which contained factual information regarding the reasons for the voluntary quit. In accordance with the Agency definition of participation, the employer participated in the fact-finding interview and its account is not subject to charge. See 871 IAC 24.10. Consequently, a waiver cannot be considered. The case is remanded for determination of the benefits paid.

DECISION:

The unemployment insurance decision dated February 18, 2014, (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 amount of the overpayment.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs