

**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**

**THOMAS M MISIAG
624 WHEATON RD
IOWA CITY IA 52246**

**KELLY SERVICES INC
999 W BIG BEAVER RD
TROY MI 48084-4716**

**Appeal Number: 05A-UI-06427-HT
OC: 05/22/05 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) – Quit
Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

The employer, Kelly Services, filed an appeal from a decision dated June 14, 2005, reference 02. The decision allowed benefits to the claimant, Thomas Misiag. After due notice was issued, a hearing was held by telephone conference call on July 7, 2005. The claimant participated on his own behalf. The employer participated by Supervisor Kris Kolbe.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Thomas Misiag began employment with

Kelly Services on September 22, 2005. His last assignment was at Moore Wallace for an indefinite period of time. It was to begin on May 18, 2005, but two days prior to that he was required to come to the employer's office and sign various documents regarding non-disclosure agreements and waivers. At that same time, he was given a detailed job description and a brochure regarding his work duties.

Mr. Misiag worked only one shift on May 18, 2005, then came in the next day and said he did not want to continue. He felt he "could not do the job" and "did not want to waste any more time training" for it. His duties the night before had consisted largely of watching while a trainer showed him how to disassemble and reassemble the equipment he would be using. Mr. Misiag did not actually do any of the work at that time, merely observed, but he felt he could not do the job. No one at Moore Wallace told him he was not doing something correctly or well.

Thomas Misiag has received unemployment benefits since filing a claim with an effective date of May 22, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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.

871 IAC 24.25(33) 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 section 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 section 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:

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

The claimant had been advised, via the printed job description, of what he would be required to do during his assignment at Moore Wallace. In spite of this, the claimant did not feel comfortable doing the job once the trainer showed him the procedures on his first night. There is nothing in the record to establish the claimant could not have continued in this assignment, because no dissatisfaction was expressed by the client company regarding his work performance. His perception that he could not do the job does not appear to have been based on any actual failure to do the work, merely his own perception he would not be able to benefit from the training he was being given. Under the provisions of the above Administrative Code

section, this is a quit without good cause attributable to the employer. The claimant is disqualified.

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.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of June 14, 2005, reference 02, is reversed. Thomas Misiag is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible. He is overpaid in the amount of \$1,520.00.

bgh/kjf