

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

RUSSELL D MCCLARNON  
3361 – 280<sup>TH</sup> ST  
CLARINDA IA 51632

ADVANCE SERVICES INC  
c/o TALX UC EXPRESS  
PO BOX 66864  
ST LOUIS MO 63166-6864

Appeal Number: 05A-UI-11555-LT  
OC: 10-02-05 R: 01  
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)

Iowa Code §96.5(1) – Voluntary Leaving  
Iowa Code §96.3(7) – Recovery of Benefit Overpayment  
Iowa Code §96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

Employer filed a timely appeal from the October 31, 2005, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held on November 30, 2005. Claimant did participate. Employer did participate through Brandie McFarland.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time production worker assigned to Romech through September 14, 2005 when he quit. After 720 hours of work, temporary employees are eligible for consideration

to be hired by Romech but only if they have a high school diploma or equivalent. Chad Michaels, immediate supervisor, and Mike Bolton, supervisor at the assignment, told claimant after he asked when he would begin to work full time, he could not be employed full time (with pay raise and benefits) unless he obtains a GED. Claimant then walked off the job even though he could have stayed on as a temporary employee indefinitely. He then reported to employer the next day to pick up his check and ask for work but there was no work available.

The claimant has received unemployment benefits since filing a claim with an effective date of October 2, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his work assignment without good cause attributable to the employer.

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 has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code §96.6(2) (amended 1998).

While claimant maintains he was discharged after the 720 hours elapsed, it was only his eligibility for permanent hire at Romech that was in question, not his continued employment at the assignment as an indefinite temporary worker from Advance Services, Inc. Since continued work was available indefinitely as a temporary employee and claimant walked off the job because of his anger that his lack of a GED would prevent him from being hired at Romech, the separation was without good cause attributable to the employer. Benefits are denied.

While claimant reported for additional work assignment the next business day and meets the requirements of Iowa Code §96.5(1)j, his leaving the assignment the day before was disqualifying and he had not yet earned ten times his weekly benefit amount for the purposes of requalification.

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 October 31, 2005, reference 03, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he 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 \$2,104.00.

dml/s