

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TROY IRBY
Claimant

APPEAL NO. 09A-UI-06857-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAMBRIDGE TEMPOSITIONS INC
Employer

OC: 04/05/09
Claimant: Respondent (2-R)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 30, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 29, 2009. Claimant Troy Irby did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Darlene Hughes, Accounts Manager, represented the employer. Exhibit One was received into evidence.

ISSUE:

Whether the claimant separated from the employment for a reason that disqualifies him for unemployment insurance benefits. The administrative law judge concludes that the claimant voluntarily quit the employment.

Whether the claimant's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency. Troy Irby first started obtaining temporary work assignments through the employer in 2004. Mr. Irby started his most recent temporary employment assignment on October 6, 2008. The assignment was a full-time assignment at Heinz/Quality Chef in Cedar Rapids. Mr. Irby last performed work in the assignment on November 14, 2008. The next work day, Mr. Irby notified the employer that he had been in a car accident on his way to work, would be absent that day, but would return the next day. Mr. Irby never returned to the assignment and never made further contact with the employer. The employer continued to have work available for Mr. Irby. Contrary to assertions the claimant made at the fact-finding interview, Heinz/Quality Chef did not experience any slowing of the work in November 2008 and continued to have steady work available for the claimant. Mr. Irby did not complete the assignment.

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence in the record indicates that Mr. Irby voluntarily quit the temporary employment assignment and voluntarily quit the employment with Cambridge Tempositions by failing to return to the assignment or contact the employer after November 14, 2008. The evidence indicates that continued work was available. The claimant's voluntary quit was without good cause attributable to the employer. Effective November 14, 2008 Mr. Irby is disqualified for benefits until 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 employer's account shall not be charged for benefits paid to Mr. Irby.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits. The Claims Division should consider the EUCU benefits disbursed to the claimant on or after November 14, 2008 in connection with the September 28, 2008 EUCU claim date, which was based on the April 6, 2008 original claim date.

DECISION:

The Agency representative's April 30, 2009, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until 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 employer's account shall not be charged.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits. The Claims Division should consider the EUCU benefits disbursed to the claimant on or after November 14, 2008 in connection with the September 28, 2008 EUCU claim date, which was based on the April 6, 2008 original claim date.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs