

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

ADARSH KAPOOR
932 - 31ST ST
DES MOINES IA 50312-3609

ADECCO USA INC
c/o FRICK UC EXPRESS
PO BOX 66736
ST LOUIS MO 63166-6736

Appeal Number: 06A-UI-05384-B
OC: 04/09/06 R: 02
Claimant: Appellant (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)

871 IAC 24.1(113)a - Separation Due to Layoff

STATEMENT OF THE CASE:

Adarsh Kapoor (claimant) appealed an unemployment insurance decision dated May 12, 2006, reference 02, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Adecco USA, Inc., (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Des Moines, Iowa, on June 29, 2006. The claimant participated in the hearing. The employer participated through Katie Nguyen, Office Supervisor and Employer Representative Kevin Rafferty participated by telephone.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time customer service representative for this temporary employment agency from November 1, 2005 through April 3, 2006. He was assigned to work at Marsh and the assignment was going to end at the end of December 2005 but was pushed back to January 31, 2006. The claimant was notified in January 2006 that the assignment was going to be indefinite and was asked whether he could commit to the ongoing assignment. He said that he could, except for a three-week break in March 2006 when he had to go home to India. Both his employer and his assigned employer agreed to let him take this break and indicated there would be no problems with him returning to work after his leave. During February 2006, the claimant told both the employer and the assigned employer the actual dates of his leave. He was scheduled to leave on March 13, 2006 and would return on April 1, 2006. Again, there was no problem with him taking leave.

However, during the week beginning March 6, 2006, he was advised that March 10, 2006 would be his last day and he would not be returning to that assignment. The claimant had invested too much money to cancel his trip and he was also going to India to be with his mother during her knee surgery. He left and upon his return called both the employer and the assignment employer on April 3, 7 and 13, 2006, with no response. He had been advised before he left to also contact the assignment employer, which is why he did so. During the time the claimant was gone, the employer had removed its employees from Marsh and had moved its physical office location. When the claimant did not get any return calls, he assumed the employer had no additional assignments for him. The employer contends the claimant simply quit his employment and failed to contact the employer upon his return from vacation.

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. All terminations of employment are generally classified as layoffs, quits, discharges or other separations. 871 IAC 24.1(113)(a). A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer or an employer has discharged the claimant for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant did not intend to quit and took no actions to carry out the intent to quit.

871 IAC 24.22(2)j(1)(2)(3) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

He left on an approved leave of absence and took action upon his return to begin another assignment, but his calls were not returned. The employer contends the claimant left without authorization and did not contact the employer after that. The employer only provided hearsay evidence as to the arrangements the claimant made with its employee Mary Gaffney, since she was not present to testify. The employer's hearsay testimony does not overcome the claimant's credible, sworn testimony to the contrary.

In accordance with the above-mentioned code section, the evidence establishes the employer's failure to reemploy the claimant after his approved leave of absence resulted in his layoff effective April 3, 2006. When an employer initiates a separation, the reasons for the separation must constitute work-connected misconduct before a claimant can be denied unemployment insurance benefits. A layoff does not constitute work-connected misconduct. The claimant's separation from employment was not due to any misconduct on his part nor did he quit his job. The claimant is qualified to receive unemployment insurance benefits, provided he is otherwise eligible.

DECISION:

The unemployment insurance decision dated May 12, 2006, reference 02, is reversed. The claimant is qualified for unemployment insurance benefits, provided he is otherwise eligible.

sdb/cs