

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

JERRY P BREWER
2076 – 275TH ST
ARGYLE IA 52619

ADECCO USA INC
C/o FRICK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-00775-BT
OC: 12/07/03 R: 04
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 - Voluntary Quit
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Adecco USA, Inc. (claimant) appealed an unemployment insurance decision dated January 16, 2004, reference 03, which held that Jerry Brewer (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held on February 12, 2004. The claimant provided a telephone number but was not available when called for hearing, and therefore, did not participate. The employer participated through Heather Adkins, Operations and Ralph McGlophen.

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 firm. The claimant was hired on June 9, 2003 as a first shift welder. He was let go from his assignment because of poor attendance on August 16, 2003. The claimant was not discharged from his employment but did not again contact the employer until September 8, 2003. The employer considered the claimant to have quit his employment when he failed to maintain contact with the employer as required.

The claimant contacted the Appeals Section February 12, 2004, at 4:00 p.m. The record closed at 2:14 p.m. The claimant received the hearing notice for the 2:00 p.m. hearing and provided a telephone number. However, when that number was called, no one answered. The administrative law judge called the number again to be sure it was the correct number and again, no one answered. The claimant contends his phone never rang and requested that the record be reopened.

The claimant filed a claim for unemployment insurance benefits effective December 7, 2003 and he has received benefits after the separation from employment in the amount of \$824.00.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant request to reopen the hearing should be granted or denied. If a party responds to a hearing notice after the record has been closed, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c).

The claimant had provided a telephone number to participate in the hearing but was not available when that number was called. Although the claimant intended to participate in the hearing, that is not the determining factor when evaluating whether good cause exists to reopen the record when a party fails to participate. The claimant contends his telephone never rang but the attempts to contact him were tape-recorded. The claimant was advised his hearing started at 2:00 p.m. but he did not call the Appeals Section until almost two hours later. It would seem if the claimant was present and ready to participate in the hearing, he would have contacted the Appeals Section immediately when he did not receive the telephone call at the time of the hearing. It is up to the parties to determine that the number provided to the Appeals Section is properly working at the time of the scheduled hearing. The claimant did not establish good cause to reopen the hearing. Therefore, the claimant's request to reopen the hearing is denied.

The next issue to be determined 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 or if the employer discharged him for work-connected misconduct. Iowa Code Sections 96.5-1 and 96.5-2-a. An individual who is a temporary employee of a temporary employment firm may be disqualified from receiving unemployment insurance benefits if the individual does not notify the temporary employment firm within three working days after ending a job assignment in an attempt to obtain another job assignment. 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. 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 Section 96.5-1-j.

In the case herein, the claimant was working for a temporary employment agency but the employer failed to provide the three-day notification rule to the claimant in writing. However, the employer did make the claimant aware he had to maintain contact with the employer or he would be considered to have voluntarily quit. The claimant's assignment was not completed on August 16, 2003 but the client refused to have the claimant work there any longer due to poor attendance. The claimant never returned to the employer or contacted the employer to inquire about another assignment. His separation was therefore without good cause attributable to the employer and benefits are denied.

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 unemployment insurance decision dated January 16, 2004, reference 03, 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 claimant is overpaid benefits in the amount of \$824.00.

sdb/kjf