

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JONATHAN ORTIZ

Claimant

APPEAL NO: 09A-UI-00967-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

**AVENTURE STAFFING & PROFESSIONAL
SERVICES LLC**

Employer

**OC: 08-31-08 R: 01
Claimant: Respondent (2R)**

Section 96.5-1-j - Voluntary Quit of Temporary Employment
Iowa Code section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 12, 2009, reference 03, which held that the claimant was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 6, 2009. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which he could be contacted, and therefore, did not participate. The employer participated through Robert Hardy, Human Resources Assistant. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant failed to contact the temporary employment agency within three working days after the completion of his assignment when notified of this requirement at the time of hire.

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 temporary laborer from September 30, 2008 through November 24, 2008. At the time of hire, he signed a notification document which advised him he was required to contact the employer within three working days of the completion of his assignment to provide his availability. The notification document is separate from the employment application and also requires the employee to call in every week after he satisfied the three-day rule. The claimant was assigned to work at Sioux City Compressed Steel October 9, 2008. The client company's work rules provide there can be no cell phone use while working and the claimant was advised of this rule by both the branch manager and the customer. He was discharged from the assignment November 24, 2008, due to repeated cell phone usage. The claimant contacted the employer December 3, 2008, when he came in to sign the availability sheet. No work was available at that time. He again called in his availability

on December 22, 2009. The employer offered the claimant an assignment December 30, 2008, but the claimant turned down the offer. The claimant did not contact the employer again until January 14, 2009.

The claimant filed a claim for unemployment insurance benefits effective August 31, 2008 and has received benefits after the separation from employment.

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. 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. Temporary employment agencies are governed by Iowa Code section 96.5-1-j, which places specific restrictions on both the employer and the employee with regard to qualification for unemployment insurance benefits after a voluntary separation.

Iowa Code section 96.5-1-j 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, but the individual shall not be disqualified if the department finds that:

j. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.

To show that the employee was advised in writing of the notification requirement of this paragraph, the temporary employment firm shall advise the temporary employee by requiring the temporary employee, at the time of employment with the temporary employment firm, to read and sign a document that provides a clear and concise explanation of the notification requirement and the consequences of a failure to notify. The document shall be separate from any contract of employment and a copy of the signed document shall be provided to the temporary employee.

For the purposes of this paragraph:

(1) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their work force during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(2) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

The evidence demonstrates the employer has complied with the requirements of Iowa Code section 96.5-1-j. The claimant knew or should have known he was required to contact the employer after an assignment ended to provide notice of his availability. The employer informed him that his assignment was over but the claimant did not state that he was available or request an additional assignment at that time. The claimant's assignment ended November 24, 2008, but he did not contact the employer until December 3, 2008, which does not satisfy the requirements of Iowa Code section 96.5-1-j. The claimant is considered to have voluntarily quit his employment without good cause attributable to the employer and benefits are denied.

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 could 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.

DECISION:

The unemployment insurance decision dated January 12, 2009, 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Julie A. Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs