

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEREMY VAN HAUEN**  
Claimant

**APPEAL NO: 09A-UI-01161-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**L A LEASING**  
Employer

**OC: 12-21-08 R: 04**  
**Claimant: Respondent (2R)**

Section 96.5-1-j - Voluntary Quit of Temporary Employment

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated January 23, 2009, reference 02, 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 11, 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. Colleen McGuinty, Unemployment Benefits Administrator and Ronda Stout, Branch Manager participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

**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 assigned to Plastic Products Company from August 20, 2008 through December 17, 2008. He called in his absences due to illness December 15 and 16, 2008. The client had advised all employees that there would be a plant shut down for the holidays as of December 17, 2008. At the time of hire, the claimant 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. After December 17, 2008 the claimant next contacted the employer to request work January 8, 2009. The employer offered him work with Plastic Products Company but the claimant refused because he wanted something closer. He checked in for work on January 9, 2009, and then on February 5, 2009. The employer offered him work with Plastic Products Company again on February 5, 2009, since they were able to find transportation for him. The claimant returned to work for the employer February 10, 2009.

The claimant filed a claim for unemployment insurance benefits effective December 21, 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. His assignment ended

December 17, 2008, when the client company went on a plant shut-down. The claimant did not contact the employer to request additional work until January 8, 2009. 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 23, 2009, reference 02, 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.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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