

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN MEDINA**

Claimant

**APPEAL NO. 07A-UI-01466-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LABOR READY MIDWEST INC**

Employer

**OC: 12/17/06 R: 01  
Claimant: Respondent (2)**

Section 96.5(1) – Quit  
Section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The employer, Labor Ready Midwest, filed an appeal from a decision dated January 30, 2007, reference 04. The decision allowed benefits to the claimant, John Medina. After due notice was issued, a hearing was held by telephone conference call on February 26, 2007. The claimant participated on his own behalf. The employer participated by Branch Manager David Etzel.

**ISSUE:**

The issue is whether the claimant quit work with good cause attributable to the employer.

**FINDINGS OF FACT:**

John Medina began working for Labor Ready Midwest on April 21, 2004. The employer provides temporary day labor to its clients. On October 25, 2006, the claimant was assigned to work at Brown Construction and arrived there after two other Labor Ready Midwest employees had reported for their daily assignment. When he had worked approximately three hours, the other two employees decided to leave, for reasons the claimant did not know, and he elected to go with them so he could get a ride back to Labor Ready Midwest, although there was work still to be done at the assignment.

He has not worked for the employer since that time and the records of Iowa Workforce Development indicate no wages have been reported from any other insured work since the fourth quarter 2006.

John Medina has received unemployment benefits since filing a claim with an effective date of December 17, 2006.

## 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.

871 IAC 24.25(1) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(1) The claimant's lack of transportation to the work site unless the employer had agreed to furnish transportation.

871 IAC 24.26(19) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

The claimant did not complete his assignment as agreed on October 25, 2006. He left the job before being released by the on-site supervisor only because he wanted a ride with the other two employee who were leaving for reasons of their own. He did not attempt to talk to the supervisor to see if he could be provided with transportation back to Labor Ready Midwest when the day's work was done. Lack of transportation does not constitute good cause attributable to the employer for quitting.

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.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The representative's decision of January 30, 2007, reference 04, is reversed. John Medina is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. he is overpaid in the amount of \$1,520.00.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw