

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MAURICE S GREEN
Claimant

APPEAL NO: 14A-UI-10132-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LABOR READY MIDWEST INC
Employer

OC: 08/24/14
Claimant: Respondent (4)

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.3(7) – Overpayment of Benefits

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's September 18, 2014 determination (reference 02) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant's employment separation was for nondisqualifying reasons. The claimant did not respond to the hearing notice or participate at the October 17 hearing. Julia Topp appeared on the employer's behalf. Based on the evidence, the employer's arguments, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits and has been overpaid benefits he has received since August 24, 2014.

ISSUES:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

Has the claimant been overpaid any benefits he has received since August 24, 2014?

If the claimant has been overpaid, is he responsible for paying back the overpayment or will the employer be charged for the overpayment?

FINDINGS OF FACT:

The claimant registered to work with the employer, a temporary staffing firm, about 18 months ago. The claimant's last assignment was in Boone, Iowa. He rode with another employee to that job site.

On August 18, G., the employee the claimant rode to work with, contacted Topp to ask if he could leave work early because of a family medical emergency. Topp gave G. permission to leave work early. Topp told G. that the claimant and the other employee who rode with him to Boone would be picked by the employer at the end of the day and taken home. The claimant then talked to Topp and told her he wanted to go home early with G. Topp told the claimant that he could not leave work early. The claimant told Topp he wanted to leave work because he was tired. Topp did not give the claimant permission to leave work early.

The claimant left work early without the employer's or client's permission. He rode back to Des Moines with G. When the claimant left the job site, he walked off the job assignment; he had not completed this assignment. The claimant is not eligible to be assigned to another job because he walked off an assignment on August 18.

The claimant established a claim for benefits during the week of August 24, 2014. He has filed claims for the weeks ending August 30 through October 18, 2014. He received his maximum weekly benefit amount of \$194 for each of these weeks. The employer did not participate at the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

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 discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. When the claimant left work early on August 18 after the employer told him he could not leave, he voluntarily quit this employment. When a claimant quits, he has the burden to establish he quit for reasons that qualify him to receive benefits. Iowa Code § 96.6(2).

The claimant may have personal reasons for walking off the job after he was told to stay, but the evidence does not establish that he quit for reasons that qualify him to receive benefits. As of August 24, 2014, the claimant is not qualified to receive benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3(7). Based on this decision, the claimant is not legally entitled to receive benefits for the weeks ending August 30 through October 18, 2014. He has been overpaid \$970 in benefits he received for these weeks.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)a, b.

The definition of participate is found in 871 IAC 24.10(1). The rule requires submitting detailed factual information of the quantity and quality that if un rebutted would be sufficient to result in a decision favorable to the employer. The rule emphasizes that the most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. Written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

In this case, the employer did provide detailed factual information of the quantity and quality that if un rebutted would have been sufficient to result in a decision favorable to the employer. The

employer did not satisfy the participation requirements of the law. Therefore, the employer's account will be charged the \$970 overpayment and the claimant is not required to pay back this overpayment.

DECISION:

The representative's September 18 determination (reference 02) is modified in the employer's favor. The claimant voluntarily quit this employment for reasons that do not qualify him to receive benefits. As of August 24, 2014, the claimant is disqualified from receiving unemployment insurance benefits. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible.

The claimant has been overpaid \$970 in benefits he received for the weeks ending August 30 through October 18, 2014. Since the employer did not participate at the fact-finding interview, the employer's account will be charged the \$970 overpayment. The claimant is not required to pay back this overpayment.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css