

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WILLIAM F TISDALE**  
Claimant

**APPEAL NO: 18A-UI-02813-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PERSONNEL STAFFING GROUP LLC**  
Employer

**OC: 01/28/18**  
**Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Leaving  
Section 96.5(1)j – Voluntary Leaving (Temporary Employment)

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 19, 2018, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 29, 2018. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Stacy Navarro, Human Resources Coordinator; Cassie Dilly, Operations Manager; and Evelyn Hernandez, Employer Representative/Account Executive, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

**ISSUE:**

The issue is whether the claimant voluntarily quit after completing the assignment by failing to seek reassignment from the employer.

**FINDINGS OF FACT:**

The claimant was employed as a full-time general laborer for Personnel Staffing Group, LLC, last assigned at Alter Metal Recycling from August 21, 2017 to January 29, 2018. The assignment was a temp to hire position and after 90 days the client planned to hire the claimant but he was required to submit to a hearing test which he failed. Consequently, the client did not make the offer to the claimant and he was not allowed to continue in that position.

The employer has a policy that requires employees to report to the employer for further assignment within three business days upon the completion of an assignment (Employer's Exhibit One). The employer provides the employee a copy of the policy that the employee signs indicating he understands the policy. After the assignment ended January 29, 2018, the claimant failed to report to the employer within three working days as required by written policy.

The claimant has claimed and received unemployment insurance benefits in the amount of \$1,150.00 for the five weeks ending March 3, 2018.

The employer did not participate in the fact-finding interview.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Code section 96.5(1)j provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. (1) 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.

(2) 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.

(3) For the purposes of this paragraph:

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

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

The claimant completed the assignment. There was no misconduct on the part of the claimant and he did not voluntarily quit his assignment.

The remaining issue is whether the claimant sought reassignment from the employer. The employer's policy requires employees to seek reassignment from the employer within three

business days after the end of the assignment. The claimant did not contact the employer for another assignment after being denied the position at Alter Metal Recycling. Therefore, benefits must be denied.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. 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. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, 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.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)“b” as amended by 2008 Iowa Acts, Senate File 2160.

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 section 96.3(7)a, b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the claimant did not receive benefits due to fraud or willful misrepresentation and employer failed to participate in the finding interview, the claimant is not required to repay the overpayment and the employer remains subject to charge for the overpaid benefits.

The employer did not participate in the fact-finding interview. Consequently, the claimant’s overpayment of benefits is waived and his overpayment, in the amount of \$1,150.00 for the five weeks ending March 3, 2018, shall be charged to the employer’s account.

**DECISION:**

The February 19, 2018, reference 01, decision is reversed. The claimant’s separation from employment was attributable to the employer but the claimant did not seek reassignment from the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The employer did not participate in the fact-finding interview within the meaning of the law. Therefore, the claimant’s overpayment of benefits, in the amount of \$1,150.00 for the five weeks ending March 3, 2018, is waived as to the claimant and shall be charged to the employer’s account.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn