

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS C MAY
Claimant

APPEAL NO: 15A-UI-03019-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

OC: 02/15/15
Claimant: Respondent (2)

Section 96.5-1-j – Temporary Employment
871 IAC 24.26(15) – Temporary Employment
Section 96.3-7 – Recovery of Overpayment of Benefits
871 IAC 24.10 – Employer Participation

STATEMENT OF THE CASE:

Team Staffing Solutions, Inc. (employer) appealed a representative's March 6, 2015 decision (reference 01) that concluded Thomas C. May (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 7, 2015. The claimant participated in the hearing. Sarah Fiedler appeared on the employer's behalf. During the hearing, Employer's Exhibit One was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was there a disqualifying separation from employment? Was the claimant overpaid unemployment insurance benefits, and if so, is that overpayment subject to recovery based upon whether the employer participated in the fact-finding interview?

FINDINGS OF FACT:

The employer is a temporary staffing agency. After a prior period of employment with the employer, the claimant's most recent assignment began on November 25, 2013. He worked full time as a production worker on the first shift at the employer's Burlington, Iowa business client through May 5, 2015. The assignment ended that date because the business client deemed the assignment to be completed. The business client informed the employer of the completion of the assignment on February 5, 2015.

The claimant was not scheduled to work on Friday, February 6. That morning one of the employer's representatives came to the claimant's home to inform him of the ending of the assignment. He advised the claimant that he should contact the employer's office "as soon as possible" to see if other work was available.

On October 29, 2013 the claimant had signed and had been given a copy of the employer's notification requirement indicating that he needed to seek placement in a new assignment within three working days of the end of the assignment to avoid being considered to be a voluntary quit. After being informed of the ending of the assignment on February 6 the claimant did not seek reassignment until February 19, 2015. He had no specific reason as to why he had waited until that date.

The claimant established a claim for unemployment insurance benefits effective February 15, 2015. A fact-finding interview was held with a Claims representative at 9:05 a.m. on March 5, 2015. The Claims representative called the employer's representative, Fiedler, but she was on the phone in another fact-finding interview. The Claims representative left a message for Fiedler, and Fiedler then returned the call shortly thereafter and left a message for the Claims representative containing the employer's information for the fact-finding interview. The claimant has received unemployment insurance benefits after the separation in the amount of \$2,864.00.

REASONING AND CONCLUSIONS OF LAW:

The essential question in this case is whether there was a disqualifying separation from employment. An employee of a temporary employment firm who has been given proper notice of the requirement can be deemed to have voluntarily quit his employment with the employer if he fails to contact the employer within three business days of the ending of the assignment in order to seek reassignment, unless he had good cause for the delay. Iowa Code § 96.5-1-j; Rule 871 IAC 24.26(19).

Here, the claimant had been given the proper notice. He did not seek reassignment until nearly two weeks after being informed of the ending of the assignment. He did not have good cause for the delay, having even been advised by the employer's representative on February 6 to check in for work "as soon as possible." Benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is then otherwise eligible.

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 claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits. Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

DECISION:

The representative's March 6, 2015 decision (reference 01) is reversed. The claimant is considered to have voluntarily quit by failing to timely seek reassignment after the completion of

a temporary assignment. The employer's account is not subject to charge. The claimant is overpaid \$2,864.00, which is subject to recovery.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css