

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAMONA D CARTER
Claimant

APPEAL NO. 15A-UI-06698-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING INC
Employer

OC: 05/17/15
Claimant: Respondent (2)

Section 96.5-1-j - Request for Job Assignment
Section 96.3-7 - Benefit Overpayment

STATEMENT OF THE CASE:

L A Leasing Inc. filed a timely appeal from a representative's decision dated January 8, 2015, reference 04, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided a telephone hearing was held on July 20, 2015. Claimant participated. The employer participated by Ms. Coleen McGinty, Unemployment Benefit Administrator; Mr. Eddie Smith, Branch Office Lead-Iowa City and Mr. Tanner McCutcheon, Administrative Assistant. Employer's Exhibit A was admitted into evidence.

ISSUE:

At issue is whether the claimant contacted the temporary employment company within three working days after the completion of the last work assignment to establish her availability for more assignments.

FINDINGS OF FACT:

Having considered all the evidence in the record, the administrative law judge finds: Ramona Carter began employment with L A Leasing Inc. on June 19, 2013. Claimant was assigned to work at various client employers. On November 13, 2014, Ms. Carter signed an agreement that she would contact the temporary employment service employer within three working days after the completion of each work assignment to establish her availability for additional work assignments with the temporary employment company.

Ms. Carter was most recently assigned by L A Leasing Inc. to a one-day assignment at a Marriott facility in Iowa City as a banquet server. The assignment took place on November 15, 2014. Although the claimant was aware that she was expected to contact the temporary employment service within three working days to establish her availability for additional work assignments, Ms. Carter did not do so. Company records do not reflect that Ms. Carter called in for additional work assignments and both Mr. Smith and Mr. McCutcheon, the workers assigned to the Iowa facility location, testified that the claimant did not call in and that the company has had no further contact from Ms. Carter since the assignment ended on November 15, 2014.

It is the claimant's belief that she spoke to Tanner McCutcheon for more work assignments and none were available.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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 purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of each temporary assignment so that the claimant may be reassigned and continue working. In this case the claimant gave the employer no notice of her availability and therefore is considered to have quit the employment, even though the temporary job assignment may have ended. Ms. Carter asserted that she had personally contacted the temporary employment firm by telephone after completing the last assignment and had spoken with a specified individual at that time. Company records did not

reflect that the claimant had called in as required. Mr. Tanner McCutcheon was called as a rebuttal witness by the employer and testified under oath. The claimant did not call in as required following the completion of her last work assignment. The claimant elected not to cross-examine Mr. McCutcheon and offered no rebuttal testimony.

The administrative law judge finds the testimony of the employer's witnesses to be credible and not inherently improbable. The testimony of Mr. McCutcheon was collaborated by the testimony of the employer's two additional witnesses.

For the above stated reasons administrative law judge gives more weight to the employer's testimony in this matter. Company records did not reflect that the claimant called in and the testimony of three employer witnesses all confirm claimant failed to call in to report her availability following her last work assignment with the company.

Because the claimant gave the employer no notice of her availability, she is considered to have quit the employment and the claimant's separation was not attributable to the employer. The unemployment insurance benefits are withheld until the claimant has worked and has been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Because the claimant has been deemed ineligible for benefits any benefits the claimant has received could constitute an overpayment. The administrative record reflects that the claimant has received unemployment insurance benefits in the amount of \$105.60 for the week ending date November 15, 2014. The administrative record also establishes that the employer did not participate in the fact-finding interview or make a firsthand witness available for rebuttal.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the

department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

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 un rebutted 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.

Because the claimant's separation was disqualifying, benefits were paid to which she was not entitled. The unemployment insurance law 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. However the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant, and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits if it is determined they did participate in the fact-finding interview. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. Since the employer did not participate in the fact-finding interview the claimant is not obligated to repay the agency the benefits she received and the employer's account shall be charged.

DECISION:

The representative's decision dated June 8, 2015, reference 04, is reversed. Claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until claimant has worked and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible. Claimant has been overpaid unemployment insurance benefits in the amount of \$105.60. Claimant is not obligated to repay that amount to the agency. The employer shall be charged based upon the employer's failure to participate in the fact-finding interview in this matter.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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