

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SCOTT E HILL
Claimant

REMEDY INTELLIGENT STAFFING INC
Employer

APPEAL NO. 16A-UI-12210-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/02/16
Claimant: Respondent (2)**

Iowa Admin. Code ch. 871 r. 24.22(j) – Leave of Absence
Iowa Code § 96.3-7 – Recovery of Overpayment of Benefits
871 IA Admin. Code 24(10) – Employer Participation in Fact Finding

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated November 1, 2016, reference 03, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on December 1, 2016. Claimant participated personally. Employer participated by Julie Coughlin. Employer's exhibit 1 was admitted into evidence.

ISSUES:

Whether claimant is on an approved leave of absence?

Whether claimant was overpaid benefits?

If claimant was overpaid benefits, should claimant repay benefits or should employer be charged due to employer's participation or lack thereof in fact finding?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on June 27, 2016. Claimant contacted employer on or around July 11, 2016 and notified employer that he'd injured his shoulder outside of work and was not able to work.

Claimant subsequently had shoulder surgery and has been recovering. Claimant brought a doctor's note into employer on or around October 4, 2016. Said note stated that claimant was unable to use his injured shoulder or arm. Employer decided that claimant was still unable to do his job to the extent necessary to be placed, so employer has continued to not place claimant. Employer has stated that there is ongoing work available for claimant once he is cleared to work without restrictions.

Claimant has received unemployment benefits in this matter in the amount of \$1,185.00.

Employer did not substantially participate in fact finding in this matter.

REASONING AND CONCLUSIONS OF LAW:

Iowa Admin. Code r. 871-24.22(2)(1)(2)(3) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

A claimant is not qualified to receive unemployment insurance benefits if the claimant and employer have come to an agreement that claimant will take time off work for an injury that was not work-related, and both parties have not agreed to have claimant return to work as he is not currently released to work without restrictions.

The overpayment issue was addressed. Claimant has received unemployment benefits in this matter in the amount of \$1,185.00.

The issue of employer participation was addressed. As employer did not substantially participate in fact finding in this matter, employer's account will be charged for overpayment of monies to claimant.

DECISION:

The decision of the representative dated November 1, 2016, reference 03, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. Overpayment of benefits in the amount of \$1,185.00 received by claimant will be charged to employer's account as employer did not substantially participate in fact finding in this matter.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/pjs