

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICHOLAS G TERBOVIC
Claimant

APPEAL NO. 10A-UI-01970-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADECCO USA INC
Employer

OC: 06/07/09
Claimant: Respondent (2-R)

Section 96.5(1) – Voluntary Quit
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Adecco USA, Inc. (Adecco) filed an appeal from a representative's decision dated January 29, 2010, reference 05, which held that no disqualification would be imposed regarding Nicholas Terbovic's separation from employment. After due notice was issued, a hearing was held by telephone on March 18, 2010. Mr. Terbovic participated personally. The employer participated by Laura Crow, Staffing Consultant, and was represented by Annette Burwell, Paralegal.

ISSUE:

At issue in this matter is whether Mr. Terbovic was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Terbovic began working through Adecco, a temporary placement firm, on July 14, 2009. He was assigned to work full-time hours at Toyota. On December 21, he asked to have December 24 off but his request was denied. He left work four hours early on December 22 after giving two-week's notice that he was quitting.

Mr. Terbovic was scheduled to work on December 23 but called to report that he would be absent because he was in Missouri. He also rescinded his resignation. He did not report for work on December 24. He returned to Iowa on December 26. He did not make contact with the employer after December 23, 2009.

Mr. Terbovic filed an additional claim for job insurance benefits effective December 27, 2009. He has received a total of \$4,592.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that the employer initiated Mr. Terbovic's separation when he was not allowed to return to the assignment with Toyota. An individual who was

discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Terbovic was separated because of his absences of December 23 and 24. He was absent on both dates for personal reasons, to travel out of state for the holiday.

Mr. Terbovic had requested December 24 off but was told he could not have the day off. He deliberately and intentionally took the day off in spite of his request being denied. The administrative law judge presumes he would have been allowed the day off if his services had not been needed. The absence was not due to any emergency or other compelling reason. Although he had not been told he could not have December 23 off, it was an unexcused absence as it was due to a purely personal matter. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

Mr. Terbovic's unexcused absence of December 23 followed by his flagrant disregard for the fact that his request to have December 24 off was denied constituted misconduct sufficient to result in disqualification from benefits. It is true that Adecco was his employer and he may have continued to be an employee of Adecco. However, he filed his additional claim for job insurance benefits effective December 27, 2009 because he was unemployed due to his discharge from his job assignment. For the reasons stated herein, benefits are denied.

Mr. Terbovic has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated January 29, 2010, reference 05, is hereby reversed. Mr. Terbovic was discharged for misconduct in connection with his employment. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Terbovic will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css