

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

TOMMY E HOWARD
502 N PINE
NEW LONDON IA 52645

TEMP ASSOCIATES
1000 N ROOSEVELT AVE
BURLINGTON IA 52601

Appeal Number: 06A-UI-00858-DWT
OC: 01/01/06 R: 04
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Temp Associates (employer) appealed a representative's January 20, 2006 decision (reference 01) that concuded Tommy E. Howard (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant's employment separation was for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 9, 2006. The claimant participated in the hearing. Deborah Eagleman, the branch manager, appeared on the employer's behalf. 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:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits or did the employer discharge him for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant registered to work with the employer on May 7, 2003. The employer is a temporary staffing agency. The employer assigned the claimant to a job at Good Year on April 30, 2005. This was a long-term assignment.

About a week prior to November 25, 2005, a Good Year supervisor informed the claimant his job was in jeopardy because of attendance problems. The claimant understood that if he had any further attendance problems, Good Year did not want him working for them.

The claimant starts his work shift at 6:00 p.m. While the claimant was at work on November 25, his furnace went out at his home. On November 26 and 27, the claimant was scheduled to work. On November 26, the claimant contacted the employer to report he had missed his ride and would be late for work. The claimant, however, was trying to find someone to replace his furnace and to get money from friends to pay for the furnace work. The claimant did not call Good Year or the employer again on November 26 and he did not report to work. On November 27, the claimant talked to an employee at work and indicated he still was trying to get his furnace replaced. The claimant assumed Good Year would no longer allow him to work because of these additional attendance problems.

The claimant did not call or report to work on November 30 because the person the claimant rode to work with informed the claimant that he no longer had a job at Good Year. The employer received an email from Good Year indicating the claimant had not reported to work or called for several days. As a result of the claimant failing to report to work after November 25, Good Year no longer wanted the claimant to work at the job assignment. On December 1, 2005, the claimant went to the employer's office to pick up his check. At that time the employer had the claimant complete an exit evaluation regarding the Good Year assignment.

The claimant established a claim for unemployment insurance benefits during the week of January 1, 2006. The claimant filed claims for the weeks ending January 7 through 28, 2006. The claimant received his maximum weekly benefit amount of \$177.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-1, 2-a. The facts establish the claimant abandoned his job after November 25. The claimant abandoned the Good Year assignment because he assumed Good Year would not continue his assignment after he had been warned about his attendance and again had attendance problems. When a claimant quits, he has the burden to establish he quit with good cause attributable to the employer. Iowa Code §96.6-2.

The claimant knew his job assignment at Good Year was in jeopardy after a Good Year supervisor warned the claimant in mid-November that he could not miss any more work. On November 26, the claimant was trying to make arrangements to get someone to put in a furnace at his home. The claimant, however, informed the employer he would be late because he missed his ride. The employer understood the claimant would be at work on November 26, but he was not. The claimant asserted he did not report to work on November 27 at 6:00 p.m. because he was still trying to get someone to put in his furnace and obtain loans from friends to get the furnace. Since the claimant knew his job was in jeopardy and he was not scheduled to work until 6:00 p.m., it difficult to understand why he did not make arrangements to borrow money and hire someone to put in a furnace during the day instead of the evening when he was scheduled to work. Even on November 26, if the claimant was trying to get his furnace replaced, he was not truthful when he reported he would be late because he had missed his ride. It is also troublesome that the claimant failed to contact the employer to let the employer know why he had been unable to work as scheduled on November 26 and 27 and did not go to work on November 30. The claimant established compelling personal reasons for quitting his employment, but his reasons do not qualify him to receive unemployment insurance benefits. As of January 1, 2006, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending January 7 through 28, 2006. The claimant has been overpaid \$708.00 in unemployment insurance benefits.

DECISION:

The representative's January 20, 2006 decision (reference 01) is reversed. The claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of January 20, 2006. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending January 7 through 28, 2006. The claimant has been overpaid and must repay a total of \$708.00 in benefits.

dlw/pjs