

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

RONALD M CHURCHILL
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CEDAR RAPIDS IA 52403

LABOR READY MIDWEST INC
C/O TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

NUNC PRO TUNC
05A-UI-03755-DT
Appeal Number:
OC: 04/11/04 R: 03
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 Leaving
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Labor Ready Midwest, Inc. (employer) appealed a representative's March 24, 2005 decision (reference 02) that concluded Ronald M. Churchill (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 May 2, 2005. The claimant received the hearing notice and responded by calling the Appeals Section on April 21, 2005. He indicated that he would be available at the scheduled time for the hearing at telephone number 319-365-9474, which is the Cedar Rapids Agency office. However, when the administrative law judge called that number at the scheduled time for the hearing, the claimant was not available. Therefore, the claimant did not participate in the

hearing. Rebecca Dripps appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant began taking assignments with the employer on May 13, 1999. His final assignment began on April 20, 2004. He worked nearly daily as a general laborer at the employer's Cedar Rapids, Iowa business client. He would report to the employer each morning and return to the employer each afternoon to receive instruction as to whether he was to work on the assignment the next day. His last day on the assignment was October 15, 2004. The assignment ended because the claimant ceased reporting for the assignment. After working at the assignment on Friday, October 15, he returned to the employer's office and it was confirmed that he was to again work on Monday, October 18, 2004. However, the claimant was a no-call/no-show for the assignment that day and thereafter. The employer considered his assignment terminated for job abandonment. The claimant did not recontact the employer until approximately February 14, 2005. At that point, the claimant explained that he had not been in contact with the employer because he had been in jail.

The claimant established a claim for unemployment insurance benefits effective April 11, 2004. He filed an additional claim effective February 13, 2005. The claimant established a second unemployment insurance benefit year effective April 10, 2005. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$1,159.00.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

Iowa Code section 96.5-1 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.

871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The intent to quit can be inferred in certain circumstances. For example, a three-day no-call/no-show in violation of company rule is considered to be a voluntary quit. 871 IAC 24.25(4). Failing to report and perform duties as assigned is considered to be a voluntary quit. 871 IAC 24.25(27). Finally, an employee is also deemed to have left without good cause if the employee is absent from work due to becoming incarcerated. 871 IAC 24.25(16). The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code section 96.6-2. The claimant has not satisfied his burden. Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's March 24, 2005 decision (reference 02) is reversed. The claimant is deemed to have voluntarily left his employment without good cause attributable to the employer. As of October 18, 2004, 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 he is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,159.00.

ld/sc/pjs