

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

SEAN LINDER
3197 - 110TH ST
DURANT IA 52747-9527

DES STAFFING
1852 - 16TH ST
MOLINE IA 61265

Appeal Number: 06A-UI-06471-BT
OC: 01/22/06 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-j - Voluntary Quit of Temporary Employment
Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

DES Staffing (employer) appealed an unemployment insurance decision dated June 16, 2006, reference 04, which held that Sean Linder (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 25, 2006. The claimant participated in the hearing. The employer participated through Kathy Anderson, Human Resources Coordinator and Jason Mucciarone, Division Manager.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time, temporary, general laborer from March 14, 2006 through May 31, 2006, when he called in to report he would not be working that day because he was moving. Consequently, the company to which the claimant had been assigned requested he not return due to attendance problems. He was notified of the end of his assignment but did not contact the employer after that date. He moved from Davenport to Durant, Iowa.

The claimant filed a claim for unemployment insurance benefits effective June 16, 2006 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer or if the employer discharged him for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a. An individual who is a temporary employee of a temporary employment firm may be disqualified from receiving unemployment insurance benefits if the individual does not notify the temporary employment firm within three working days after ending a job assignment in an attempt to obtain another job assignment. To be disqualified from receiving benefits, at the time of hire the employer must advise the individual in writing of the three-day notification rule. The employer must also notify the individual that he may be disqualified from receiving unemployment insurance benefits if he fails to notify the employer. Iowa Code section 96.5-1-j.

In the case herein, the employer notified the claimant his assignment was over and typically, would be held to have notice of the claimant's availability because of that fact. However, in the case herein, the claimant moved and did not contact the employer after he moved. The employer had no way of knowing whether he was available to work or not. The claimant did not satisfy the requirements of Iowa Code section 96.5-1-j and is disqualified from receiving unemployment insurance benefits.

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 unemployment insurance decision dated June 16, 2006, reference 04, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has 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 \$574.00.

sda/pjs