

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALEXANDER N CHADWELL-BIGGART
Claimant

APPEAL NO. 14A-UI-00627-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING INC
Employer

OC: 11/10/13
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Quit
Section 96.5-1-j – Separation from Temporary Employment
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated January 14, 2014, reference 03, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on February 10, 2014, by telephone conference call. The claimant participated personally. The employer participated by Maria Mays, risk administrator assistant, and Kathy Hutchinson, area manager. The record consists of the testimony of Alexander Chadwell-Biggart; Maria Mays, risk manager, Kathy Hutchinson, area manager; and Employer's Exhibits 1-2. Official notice is taken of agency records.

ISSUES:

Whether the claimant voluntarily left for good cause attributable to the employer;
Whether the claimant has been overpaid unemployment insurance benefits;
Whether the claimant is required to repay unemployment insurance benefits; and
Whether the employer's account shall be charged.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a staffing service. The claimant accepted an assignment on November 3, 2013, with Orbis as a general laborer. Orbis is located in Monticello, Iowa. The claimant was a full-time employee. The claimant's assignment ended on November 14, 2013. The claimant did not request another assignment within three working days of the end of the assignment. The claimant signed a separate form which stated that if he did not contact the employer within three working days at the end of the assignment that he would be considered a voluntary quit.

The claimant established an original claim for unemployment insurance benefits with an original claim date of November 10, 2013. He has received benefits from the week ending November 16, 2013, through the week ending February 1, 2014. The total amount received is \$3912.00.

The employer participated in the fact-finding process through a written statement which gave all the pertinent information regarding the separation of employment. A copy of the availability statement was also provided. Two names of first hand witnesses with telephone numbers were provided with the statement. The representative did not contact the employer for any rebuttal.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1-j 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, but the individual shall not be disqualified if the department finds that:

j. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.

To show that the employee was advised in writing of the notification requirement of this paragraph, the temporary employment firm shall advise the temporary employee by requiring the temporary employee, at the time of employment with the temporary employment firm, to read and sign a document that provides a clear and concise explanation of the notification requirement and the consequences of a failure to notify. The document shall be separate from any contract of employment and a copy of the signed document shall be provided to the temporary employee.

For the purposes of this paragraph:

(1) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their work force during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(2) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

The claimant is not eligible for unemployment insurance benefits. The findings of fact show how the credibility issues were decided in this case. Both Ms. Mays and Ms. Hutchinson testified that the records of the employer show that the claimant did not contact the employer and

request another assignment. The employer has a policy that all requests for assignments are date stamped and put in the records. The claimant testified that he made multiple requests for additional assignments but not a single one is in the employer's records. It seems unlikely, therefore, that the claimant made the contact that he says he did. The administrative law judge concludes that the claimant did not request another assignment within three working days of the end of his assignment on November 14, 2013. He is considered to have voluntarily quit without good cause attributable to the employer. Benefits are denied.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code Section 96.3-7-a, b.

The claimant received benefit but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding process, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid. The total amount of the overpayment is \$3912.00.

DECISION:

The decision of the representative dated January 14, 2014, 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. The claimant has been overpaid unemployment insurance benefits in the amount of \$3912.00. Those benefits must be repaid by the claimant.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs