

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JACOB JOHNSON
Claimant

APPEAL NO. 19A-UI-00967-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MASTERSON PERSONNEL INC
Employer

OC: 12/09/18
Claimant: Respondent (2)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 25, 2019, reference 02, decision that held the claimant was eligible for benefits provided he met all other eligibility requirements and the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant's December 7, 2018 separation was for good cause attributable to the employer. After due notice was issued, a hearing was held on February 18, 2019. Claimant Jacob Johnson did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Jim Robertson represented the employer and presented additional testimony through Chad Dorenkamp. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibit 1 into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview. The administrative law judge took official notice of the other Benefits Bureau decisions entered in connection with the December 9, 2018 original claim.

ISSUES:

Whether the claimant's December 2018 voluntary quit from the temporary employment work assignment was without good cause attributable to the employer.

Whether the claimant's December 2018 voluntarily quit from Masterson employment was without good cause attributable to the employer.

Whether the claimant was overpaid benefits.

Whether the claimant is required to repay benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Masterson Personnel, Inc. is a temporary employment agency. On December 5, 2018, claimant Jacob Johnson accepted a full-time, temp-to-hire work assignment in the evisceration department at Simply Essentials, a chicken processing plant located in Charles City. Mr. Johnson resides in Waterloo. Mr. Johnson was responsible for his own transportation from his home in Waterloo to the workplace in Charles City. Mr. Johnson's wage in the assignment was \$12.00 per hour. Mr. Johnson's work hours in the Simply Essentials assignment were Monday through Friday, 5:00 a.m. until the end of daily production, usually around 1:00 p.m. Mr. Johnson commenced work in the Simply Essentials assignment on December 6, 2018. Mr. Johnson did not complete the assignment. Mr. Johnson last performed work in the assignment on December 7, 2018. Mr. Johnson was thereafter absent from the Simply Essentials assignment for Monday, December 10 and Tuesday, December 11, 2018.

On December 11, 2018, Chad Dorenkamp, Charles City Branch Manager for Masterson Personnel spoke with Mr. Johnson by telephone. Mr. Johnson told Mr. Dorenkamp that he wished to leave the Simply Essentials assignment. Mr. Johnson did not cite any issues with the assignment. Mr. Johnson told Mr. Dorenkamp that his uncle was in an assignment at Kerry Ingredients in Fredericksburg. Kerry Ingredients is a Masterson Personnel client. During the December 11 call, Mr. Dorenkamp told Mr. Johnson that he could not offer him another position while he was in an assignment with a client. Mr. Dorenkamp told Mr. Johnson that he could voluntarily quit the Simply Essentials assignment if he wanted to apply for an assignment at Kerry, but that there would be no guarantee of an opening at Kerry. Mr. Johnson stated that he would stop in to a Masterson office to complete a quit form. During the December 11 telephone call, Mr. Johnson did not mention to Ms. Dorenkamp that his vehicle had broken down and, therefore, that he no longer had transportation from his home in Waterloo to the Simply Essentials assignment in Charles City. That information came out on December 13, 2018, when Mr. Johnson went to Masterson Personnel's Waterloo branch office and completed a quit form. On the quit form, Mr. Johnson wrote that he was quitting the Simply Essentials assignment because "my car Broke." During the December 13 contact, the Waterloo branch representative offered Mr. Johnson a new assignment at Premier Castings in Waterloo. The proposed assignment would involve chipping and grinding metal from castings destined for use by John Deere. The proposed assignment would pay \$12.00 per hour for the first two months, but would then transition to a \$10.00 per hour base wage plus a piece rate that could result in total pay \$11.00 to \$18.00 per hour. Mr. Johnson declined the Premier Castings assignment.

Mr. Johnson established an original claim for unemployment insurance benefits that Iowa Workforce Development deemed effective December 9, 2018. Mr. Johnson received \$702.00 in benefits for the three-week period of December 9-29, 2018. Mr. Johnson's base period for purposes of the claim consists of the third and fourth quarter of 2017 and the first and second quarter of 2018. Masterson Personnel is a base period employer in connection with the claim.

On January 18, 2019, an Iowa Workforce Development Benefits Bureau deputy held a fact-finding interview that addressed Mr. Johnson's December 2018 separation from Masterson Personnel. Jim Robertson, Unemployment Operations Manager, represented the employer at the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson*

Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.25(1) provides:

Voluntary quit without good cause. 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 employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(1) The claimant's lack of transportation to the work site unless the employer had agreed to furnish transportation.

The weight of the evidence in the record establishes that Mr. Johnson voluntarily quit the Simply Essentials assignment and voluntarily quit the Masterson Personnel, Inc. employment without good cause attributable to the employer. Mr. Johnson voluntarily quit the assignment by failing to report for work in the assignment after December 7, 2018, through his December 11 verbal statement to Mr. Dorenkamp, and through his December 13 execution of the Voluntary Quit Form. The weight of the evidence establishes that Mr. Johnson quit the Simply Essentials assignment due to a loss of transportation. Despite the information Mr. Dorenkamp conveyed to Mr. Johnson on December 11, Mr. Johnson's voluntary quit was without good cause attributable to the employer. Though Mr. Dorenkamp told Mr. Johnson he could not offer him an assignment with another client while he was currently in assignment with a client, he simultaneously told Mr. Johnson there was no guarantee that Kerry would have an assignment for him. What Mr. Johnson knew at the time of the conduct, but what Mr. Dorenkamp did not know, was that Mr. Johnson no longer had transportation to the Simply Essentials assignment. Mr. Johnson further communicated his quit from the Masterson employment by declining the Waterloo assignment the employer offered to him on December 13. Accordingly, Mr. Johnson is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. Mr. Johnson must meet all other eligibility requirements.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible 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 base period employer failed to participate in the initial proceeding, the base period employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

Mr. Johnson received \$702.00 in benefits for the three-week period of December 9-29, 2018, but this decision disqualifies him for those benefits. Accordingly, the benefits Mr. Johnson received constitute an overpayment of benefits. Because the employer participated in the fact-finding interview, Mr. Johnson is required to repay the overpaid benefits. The employer's account will be relieved of liability for benefits, including liability for benefits already paid in connection with the December 9, 2018 original claim.

DECISION:

The January 25, 2019, reference 02, decision is reversed. The claimant voluntarily quit the temporary employment work assignment and the Masterson Personnel employment without good cause attributable to the employer. The claimant's quit from the employment was effective December 13, 2018 and followed his quit from the temporary work assignment. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account will be relieved of liability for benefits, including liability for benefits already paid in connection with the December 9, 2018 original claim. The claimant is overpaid \$702.00 in benefits for the three-week period of December 9-29, 2018. The claimant must repay the overpaid benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs