

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NICK E CHAPLIN

Claimant

TEMP ASSOCIATES-IOWA INC

Employer

APPEAL 17A-UI-08592-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/02/17

Claimant: Respondent (1R)

Iowa Code § 96.5(2)a – Discharge for Misconduct

Iowa Code § 96.5(1) – Voluntary Quitting

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment

STATEMENT OF THE CASE:

The employer filed an appeal from the August 17, 2017, (reference 08) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 7, 2017. Claimant did not participate. Claimant did not answer when contacted at the number provided and he did not have a voicemail box setup. Employer participated through manger Judy Rebick. Official notice was taken of the administrative record with no objection.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Did claimant quit by not reporting for additional work assignments within three business days of the end of the last assignment?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a temporary staffing agency. The employer's normal business hours are 8:00 a.m. to 5:00 p.m., Monday through Friday.

Claimant was employed as a long term temporary with possibility of hire, full-time, as a production laborer, assigned at Forterra from July 5, 2017, and was separated from the assignment, but not the employment, on July 21, 2017. On July 20, 2017, claimant called the employer and requested a different assignment. Claimant told the employer he did not like the type of work he was doing. The employer told claimant to speak to his supervisor at the assignment to let the assignment know he was quitting and re-contact the employer once he quit. On Monday, July 24, 2017, claimant re-contacted the employer and informed it he had quit. The assignment had work available for him. Claimant requested an additional assignment from the employer. The employer had an assignment available for claimant. The employer offered claimant an assignment with Green Pet Products on July 24, 2017. Claimant declined the offer of work at that time because he was moving. Claimant told the employer he would like to start an assignment the following week. The employer still considered claimant an employee after July 21, 2017 since he checked in.

Claimant contacted the employer the next week on Monday, July 31, 2017, but it did not have any assignments available for him. The employer required claimant to maintain contact every week regarding his availability and since July 31, 2017 he has been maintaining contact with the employer.

On August 8, 2017, claimant started another job assignment through the employer. Claimant worked the required one day that week. Claimant was to return on August 14, 2017, but he quit that assignment to go work at Pioneer. Ms. Rebik believes claimant is working at Pioneer in Toledo, Iowa. Claimant did not return to the employer on August 14, 2017. The employer considered claimant separated from the employer on August 14, 2017 when he quit for a job with a different company.

The employer has a policy that required claimant to contact the employer within three working days of the end of his assignment and request an additional assignment. The policy is separate document from any contract of employment. Claimant signed for a copy of the policy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation was with good cause attributable to the employer. Benefits are allowed.

Iowa Code section 96.5(1)j 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. But the individual shall not be disqualified if the department finds that:

j. (1) 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.

(2) 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.

(3) For the purposes of this paragraph:

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

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

Iowa Admin. Code r. 871-24.26(19) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for and seeking work at the end of the temporary assignment. On Monday, July 24, 2017, claimant informed the employer that his assignment had ended on Friday, July 21, 2017. Because claimant checked in, the employer still considered him an employee even though he quit his assignment. Since claimant contacted the employer within three working days of the notification of the end of the assignment and requested reassignment, no disqualification is imposed. Benefits are allowed.

As benefits are allowed, the issues of overpayment, repayment, and the chargeability of the employer's account are moot.

DECISION:

The August 17, 2017, (reference 08) unemployment insurance decision is affirmed. Claimant's separation from employment was attributable to the employer. Benefits are allowed, provided claimant is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

REMAND: The issue of whether claimant declined a suitable offer of work on July 24, 2017, as delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision. The issue of claimant's separation from the employer on August 14, 2017, as delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision. The issue of whether claimant earned wages for the week ending August 12, 2017, as delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs