

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LUKE E PETERSEN**  
Claimant

**APPEAL NO: 14A-UI-07526-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**L A LEASING INC**  
Employer

**OC: 10/06/13**  
**Claimant: Respondent (2)**

Section 96.5(1)j – Voluntary Leaving (Temporary Assignment)  
Section 96/3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the July 18, 2014, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 13, 2014. The claimant did not respond to the hearing notice by providing a phone number where he could be reached at the date and time of the hearing as evidenced by the absence of his name and phone number on the Clear2There screen showing whether the parties have called in for the hearing as instructed by the hearing notice. The claimant did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Colleen McGuinty, Unemployment Benefits Administrator, and Kristi Majewski, Account Manager, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct and whether the claimant sought reassignment from the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time laborer for L A Leasing from September 29, 2011 to October 17, 2013. The claimant was last assigned at City Carton Recycling on October 17, 2013. After the assignment ended, the claimant failed to report to the employer within three working days as required by written policy.

The claimant has claimed and received benefits in the amount of \$1,181.00.

The employer participated in the fact-finding interview by providing written statements and the name and phone number of a contact person to the fact finder.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

Iowa Code § 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.

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 claimant's assignment ended October 17, 2013 and he did not contact the employer following the completion of his assignment. The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of each temporary assignment so he may be reassigned and continue working. In this case, the claimant gave the employer no notice of his availability and, therefore, is considered to have quit the employment, even though the claimant may have returned to work for the temporary agency at some later date. Therefore, benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. In this case, the claimant has received benefits but was not eligible for those benefits. While the claimant did not receive benefits due to fraud or willful misrepresentation, the employer provided documentation to the fact finder and the name of a contact person if rebuttal statements were necessary. Consequently, the employer is considered to have participated in the hearing within the meaning of the rule. The claimant is overpaid benefits in the amount of \$1,181.00.

**DECISION:**

The July 18, 2014, reference 02, decision is reversed. The claimant's separation was not attributable to the employer. Benefits are withheld until such time as the claimant works in and has been paid for wages equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,181.00

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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