

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GEORGE BUTLER
Claimant

APPEAL NO: 06A-UI-08997-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LABOR READY MIDWEST INC
Employer

OC: 07/30/06 R: 04
Claimant: Respondent (2)

Section 96.5(1) – Quit
Section 95.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Labor Ready, filed an appeal from a decision dated August 28, 2006, reference 01. The decision allowed benefits to the claimant, George Butler. After due notice was issued a hearing was held by telephone conference call on September 25, 2006. The claimant participated on his own behalf. The employer participated by Branch Manager Dennis Homan.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

George Butler was employed by Labor Ready from August 7, 2001 until June 10, 2006. His last assignment began on April 17, 2006, at Yankee Plastics. This was a temp-to-hire job and on June 6, 2006, the client company scheduled an appointment for the claimant at Trinity Hospital for a physical and drug test. Mr. Butler appeared for the test and gave a urine sample, but it did not register an acceptable temperature and was discarded. Another appointment was scheduled at 9:00 a.m. on June 7, 2006, but the claimant did not appear for the test due to transportation problems.

On June 8, 2006, he spoke with the Tim Pope, the supervisor at Yankee Plastics. Mr. Pope offered to set up a third appointment for the drug sample but notified Mr. Butler the sample would have to be “supervised” given the fact his first sample had been discarded for too low a temperature and he had missed the second one. The claimant refused and the client company notified Labor Ready that he was no longer needed.

Mr. Butler met with Labor Ready Branch Manager Dennis Holman a few days later. He was told he no longer worked at Yankee Plastics and would not be allowed back on its premises. Mr. Butler took this to mean he was discharged from Labor Ready and did not return.

George Butler has received unemployment benefits since filing a claim with an effective date of July 30, 2006.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1 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.

The claimant believed he had been discharged from Labor Ready but this is not the case. He was told he was no longer needed at Yankee Plastics and was not to return there. This is not a discharge but a notice of end of assignment. Mr. Butler did not return to Labor Ready because he thought he had been fired. Where an individual mistakenly believes that he is discharged and discontinues coming to work (but was never told he was discharged), the separation is a voluntary quit without good cause attributable to the employer LaGrange v. IDJS, (Unpublished, Iowa App. 1984). The claimant is disqualified for voluntarily quitting work without good cause attributable to the employer.

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.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of August 28, 2006, reference 01, is reversed. George Butler is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$1,771.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/cs