

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**CHRISTINA S SOPER  
2718 WAYNE AVE APT 9  
IOWA CITY IA 52240-2533**

**TEAM STAFFING SOLUTIONS INC  
116 HARRISON ST  
MUSCATINE IA 52761**

**Appeal Number: 06A-UI-05473-DWT  
OC: 06/26/05 R: 03  
Claimant: Respondent (2)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 – Recovery of Overpayment of Benefits  
Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

Team Staffing Solutions, Inc. (employer) appealed a representative's May 22, 2006 decision (reference 10) that concluded Christina S. Roper (claimant) was qualified to receive unemployment insurance benefits, and the employer's account could be charged because the employer had not filed a timely protest. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 13, 2006. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which she could be contacted to participate in the hearing. As a result, no one represented the claimant. Bill Ramsey, a claims specialist, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the employer file a timely protest or establish a legal excuse for filing a late protest?

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant registered to work with the employer, a temporary staffing firm, on March 27, 2006. The employer assigned the claimant to a job that had an indefinite ending date. The claimant had a physical job of picking cases in a warehouse.

The claimant worked as scheduled on April 26. On April 27, the claimant was absent from work. On April 28, the claimant went to the employer's office and informed the employer she had to quit the job assignment because she could not physically do the work. The claimant concluded she could not keep up with the work because of the physical demands of the job and did not want to be discharged. There was still work to do at the assignment for an indefinite time. The claimant made herself available for other work with the employer on April 28.

The claimant reopened her claim for benefits during the week of April 30, 2006. She filed claims for the weeks ending May 6 through 27, 2006. The claimant received her maximum weekly benefit amount of \$322.00 for each of these weeks.

A notice of claim was mailed to the employer on May 3, 2006. The employer faxed a completed protest to the Department on May 15, 2006.

REASONING AND CONCLUSIONS OF LAW:

The law provides that all interested parties shall be promptly notified about an individual filing a claim. The parties have ten days from the date of mailing the notice of claim to protest payment of benefits to the claimant. Iowa Code § 96.6-2. Another portion of Iowa Code § 96.6-2 dealing with timeliness of an appeal from a representative's decision states an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court has held that this statute clearly limits the time to do so, and compliance with the appeal notice provision is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

The reasoning and holding of the Beardslee court is considered controlling on the portion of Iowa Code § 96.6-2 which deals with the time limit to file a protest after the notice of claim has been mailed to the employer. The facts indicate the employer received the notice of claim on or before May 15, 2006. Even though the Department asserted in the May 22, 2006 decision the employer faxed a protest on May 16, the evidence establishes the employer faxed the protest on May 15, 2006, the last day of the ten-day deadline. The employer filed a timely protest.

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5-1. The

claimant quit a job assignment on April 28, 2006. When a claimant quits, she has the burden to establish she quit with good cause attributable to the employer. Iowa Code § 96.6-2.

The law presumes a claimant voluntarily quits without good cause when she quits because she believes her job performance is not to the employer's satisfaction. 871 24.25(33). The claimant may have had compelling reasons for quitting her job assignment. The evidence does not establish she quit for reasons that qualify her to receive unemployment insurance benefits. As of April 30, 2006, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending May 6 through 27, 2006. The claimant has been overpaid \$1,288.00 in benefits she received for these weeks.

**DECISION:**

The representative's May 22, 2006 decision (reference 10) is reversed. The employer filed a timely protest. The claimant voluntarily quit her employment for personal reasons that do not qualify her to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of April 30, 2006. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending May 6 through 27, 2006. The claimant has been overpaid and must repay a total of \$1,288.00 in benefits she received for these weeks.

dlw/cs