

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS L PREYEAR
Claimant

APPEAL NO. 09A-UI-11507-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**LA LEASING INC
SEDONA STAFFING**
Employer

OC: 06/28/09
Claimant: Respondent (2-R)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Sedona, filed an appeal from a decision dated August 6, 2009, reference 02. The decision allowed benefits to the claimant, Thomas Preyear. After due notice was issued a hearing was held by telephone conference call on August 26, 2009. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Workers' Compensation Administrator Chad Baker and Branch Manager Ronda Stout.

ISSUE:

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

FINDINGS OF FACT:

Thomas Preyear was employed by Sedona Staffing from June 18, 2009 until July 6, 2009. He was assigned on a temp-to-hire basis with Plastic Products Company. His last day of work was July 2, 2009, and he was scheduled to return on Monday, July 6, 2009. He was no-call/no-show to work starting July 6, 2009, and never contacted Sedona Staffing after that date.

Thomas Preyear has received unemployment benefits since filing a claim with an effective date of June 28, 2009.

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 record establishes the claimant quit for not appearing for work and not contacting the employer after his last day of work on July 2, 2009. The claimant has the burden of proof to establish he had good cause attributable to the employer for quitting and he has not met that burden of proof.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of August 6, 2009, reference 02, is reversed. Thomas Preyear is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount,

provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs