

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

NICK E CHAPLIN
3500 GRAND AVE APT #4
AMES IA 50010

USA STAFFING INC
LABOR WORLD OF IOWA
3921 NE 14TH ST
DES MOINES IA 50313

Appeal Number: 04A-UI-01590-SWT
OC 08/24/03 R 02
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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 3, 2004, reference 04, that concluded the claimant was laid off due to lack of work. A telephone hearing was held on March 5, 2004. The parties were properly notified about the hearing. The claimant called in and provided a number to participate in the hearing but was not available at that number at the time of the hearing. Jodi McGonigle participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. The claimant worked full time for the employer from November 11 to November 24, 2003. He worked for ABM Janitorial cleaning at the American Packaging plant.

On November 25, 2003, the claimant informed the employer that he was quitting to accept a job working directly for American Packaging. There is no evidence that the claimant actually accepted an offer of work with American Packaging or performed services for American Packaging.

The claimant filed for and received a total of \$494.00 in unemployment insurance benefits for the weeks between November 23 and December 13, 2003.

The claimant called the Appeals Section at about 10:50 a.m. after the hearing had concluded. He explain that the number he had provided was a cell phone number and he had turned off the cell phone prior to the time of the hearing. He further explained that he did not call within five minutes of the time of the hearing because he had forgotten about the hearing until 10:50 a.m.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 26.8(3), (4) and (5) provide:

Withdrawals and postponements.

(3) If, due to emergency or other good cause, a party, having received due notice, is unable to attend a hearing or request postponement within the prescribed time, the presiding officer may, if no decision has been issued, reopen the record and, with notice to all parties, schedule another hearing. If a decision has been issued, the decision may be vacated upon the presiding officer's own motion or at the request of a party within 15 days after the mailing date of the decision and in the absence of an appeal to the employment appeal board of the department of inspections and appeals. If a decision is vacated, notice shall be given to all parties of a new hearing to be held and decided by another presiding officer. Once a decision has become final as provided by statute, the presiding officer has no jurisdiction to reopen the record or vacate the decision.

(4) A request to reopen a record or vacate a decision may be heard ex parte by the presiding officer. The granting or denial of such a request may be used as a grounds for appeal to the employment appeal board of the department of inspections and appeals upon the issuance of the presiding officer's final decision in the case.

(5) If good cause for postponement or reopening has not been shown, the presiding officer shall make a decision based upon whatever evidence is properly in the record.

The claimant has failed to show good cause to reopen the hearing since the main reason why the claimant did not participate was because he forgot about the hearing.

The next issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer.

Iowa Code Section 96.5-1-a 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:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The evidence establishes that the claimant voluntarily quit employment without good cause attributable to the employer. There is no evidence that the claimant actually accepted an offer of work with American Packaging or performed services for American Packaging. He is disqualified from receiving unemployment insurance benefits.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

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.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits effective November 23, 2003, and was overpaid \$494.00 in benefits for the weeks between November 23 and December 13, 2003.

DECISION:

The unemployment insurance decision dated February 3, 2004, reference 04, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant was overpaid \$494.00 in unemployment insurance benefits, which must be repaid.

saw/kjf