

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STUART E ASKVIG**  
Claimant

**APPEAL NO. 16A-UI-04843-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AVENTURE STAFFING & PROFESSIONAL**  
Employer

**OC: 03/20/16  
Claimant: Respondent (2)**

Iowa Code Section 96.5(1)(j) – Separation From Temporary Employment  
Iowa Code Section 96.4(3) – Able & Available  
Iowa Code Section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the March 31, 2016, reference 02, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant was temporarily laid off. The appeal hearing was started May 10, 2016, but was adjourned due to the claimant not having his copy of the employer exhibits available for the hearing. The hearing was reset for May 17, 2016 at 10:00 a.m. by agreement. Claimant Stuart Askvig participated. Deb Miller represented the employer and presented additional testimony through Amy Fischer. Exhibits One through Four and Department Exhibits D-1 and D-2 were received into evidence. The parties waived formal notice on the issue of whether the claimant has been overpaid benefits.

**ISSUES:**

Whether the claimant's separation from the temporary employment agency was for good cause attributable to the employer.

Whether the claimant was able to work and available for work during the period of March 20, 2016 through April 16, 2016.

Whether the claimant was temporarily laid off during the period of March 20, 2016 through April 16, 2016.

Whether the claimant was overpaid benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Aventure Staffing & Professional is a temporary employment agency. Stuart Askvig established his employment with Aventure in October 2015 and performed work in a single, full-time temporary work assignment at Pioneer in Renwick. Mr. Askvig began the assignment on October 26,

2015. Mr. Askvig's supervisor at Pioneer was Nate Rasmussen. Amy Fischer is the Humboldt Branch Manager for Aventure and tracked Mr. Askvig's work in the Pioneer assignment on behalf of Aventure. At the start of the employment, Aventure had Mr. Askvig sign an Employee Agreement that obligated him to contact Aventure within three working days of the end of an assignment to request additional work. The policy statement indicated that failure to make the required contact would lead the employer to conclude that Mr. Askvig had voluntarily quit and "may lead to unemployment ineligibility." The employer had Mr. Askvig sign a stand-alone policy document as well as a Policies and Procedures Checklist that contained the same provision. At the time Mr. Askvig accepted the assignment at Pioneer, the employer had Mr. Askvig sign a job assignment document that contained the same end-of-assignment notification policy. The employer provided Ms. Askvig with a copy of the documents he signed.

On or about March 21, 2016, Mr. Askvig contacted Aventure to ask whether the Pioneer assignment would be ending that week. Mr. Askvig had heard from other temp workers that the assignment would likely end soon. Ms. Fischer told Mr. Askvig that the assignment would end on March 24, 2016. Ms. Fischer asked Mr. Askvig what his plans were once the assignment ended and asked whether Mr. Askvig was interested in additional assignments through Aventure. Mr. Askvig told Ms. Fischer that he planned to return to another employer, Sadler Construction, once that employer had additional work for him. Mr. Askvig had voluntarily separated from Sadler Construction in October 2015 to go to work for Aventure and did so in anticipation of an impending layoff at Sadler Construction. At the time Mr. Askvig completed the assignment at Aventure, he expected that Sadler Construction would have more work for him in about four weeks. Mr. Askvig told Ms. Fischer that he would contact Aventure if he decided he needed additional assistance from Aventure in gaining employment. Mr. Askvig did not make further contact with Aventure. Mr. Askvig began new employment with Sadler Construction on Friday, May 13, 2016.

Mr. Askvig established a claim for unemployment insurance benefits that was effective March 20, 2016. For the week that ended March 26, 2016, Mr. Askvig reported \$476.00 in wages and received no unemployment insurance benefits. For each of the next three weeks, Mr. Askvig reported zero wages and received \$221.00 in benefits. Mr. Askvig received \$663.00 in benefits for the three-week period of March 27, 2016 through April 16, 2016. Mr. Askvig's base period for purpose of the claim established in March 2016 consists of the fourth quarter of 2014 and the first, second and third quarter of 2015. Aventure is not a base period employer for purposes of the claim and has not been charged for benefits.

At the time Mr. Askvig established his claim, he reported that he was temporarily laid off. Based on that erroneous information provided by Mr. Askvig, Workforce Development designated Mr. Askvig a "group 3" claimant, a claimant who was attached to a particular employer and for whom the job search requirement is waived. Mr. Askvig was not in fact attached to a particular employer during the period involved in his claim for unemployment insurance benefits. During the week that ended March 26, 2016, Mr. Askvig made two employer contacts. During the week that ended April 2, 2016, Mr. Askvig made one employer contact. During the week that ended April 9, 2016, Mr. Askvig made two employer contacts. During the week that ended April 16, 2016, Mr. Askvig made no employer contacts. Mr. Askvig then discontinued his claim for benefits.

#### **REASONING AND CONCLUSIONS OF LAW:**

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 evidence in the record establishes that Mr. Askvig completed the temporary work assignment on March 24, 2016 and separated from Aventure at that time. The employer's end-of-assignment notification policy in Exhibit One complies with the requirements of Iowa Code section 96.5(1)(j). The employer had Mr. Askvig sign that policy document and provided Mr. Askvig with a copy of that document. In addition, the employer provided Mr. Askvig with the same policy in the Policies and Procedures Checklist and in the Dispatch Information document. Because the employer complied with the requirements of Iowa Code section 96.5(1)(j), Mr. Askvig was obligated to contact the employer within three working days of completing the assignment at Pioneer to request another assignment. Mr. Askvig did not do that. Mr. Askvig notified the employer before the assignment ended that he was not interested in further assignments. Once the assignment ended, Mr. Askvig did not make further contact with the employer.

Iowa Code § 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 indicates that Mr. Askvig did not in fact have another employment to go to when he separated from Aventure Staffing on March 24, 2016. Indeed, he did not begin further employment until May 13, 2016, seven weeks after separating from Aventure.

Mr. Askvig's March 24, 2016 separation from Aventure was without good cause attributable to the employer. Effective March 24, 2016, Mr. Askvig is disqualified for benefit until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. Mr. Askvig must meet all other eligibility requirements. The employer's account has not been charged for benefits and will be relieved of liability for benefits.

Iowa Code § 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

An individual shall be deemed *temporarily unemployed* if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed *due to a plant shutdown, vacation, inventory, lack of work or emergency* from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated. Iowa Code Section 96.19(38)(c).

Mr. Askvig has not in fact been temporarily laid off at any point since he established his claim for benefits. At the time Mr. Askvig established the claim, he had in fact separated from the employment at Aventure staffing. At the time Mr. Askvig established the claim, he had been separated from Sadler Construction for almost five months. Because Mr. Askvig has not been attached to an employer since established his claim for benefits, he has been subject to the work search requirement since that time. Mr. Askvig complied with the work search requirement during the week that week that ended March 26, 2016, but was not otherwise "available" for work during that week for unemployment insurance purposes because of the number of hours he worked that week for Aventure effectively removed him from the labor market. See Iowa Administrative Code rule 871-24.23(23). Mr. Askvig made only one job contact during the week that ended April 2, 2016. Accordingly, Mr. Askvig did not meet the availability requirement, including the work search requirement. Mr. Askvig made two employer contacts during the week that ended April 9, 2016 and, thereby, complied with the availability requirement, including the work search requirement. During the week that ended April 16, 2016, Mr. Askvig made no employer contacts and, thereby, failed to meet the availability requirement, including the work search requirement. Even if the separation from Aventure had not disqualified Mr. Askvig for benefits, Mr. Askvig would not have been eligible for benefits for any week in which he did not meet the availability requirements. Because Mr. Askvig met the work availability requirement during the week that ended April 9, 2016, he would have been eligible for benefits for that week if he had met all other eligibility requirements. The disqualifying separation from Aventure prevented him from meeting those other requirements.

The administrative law judge need not address the able and available issue beyond the week that ended April 16, 2016, because Mr. Askvig discontinued his claim and would not be eligible for benefits for any week for which he failed to file a weekly claim. See Iowa Administrative

Code section 871 IAC 24.2(1)(g) (No continued claim for benefits shall be allowed until the individual claiming benefits has completed a voice response continued claim or claimed benefits as otherwise directed by the department).

Iowa Code section 96.3(7) provides that if a claimant receives benefits and is deemed ineligible for the benefits, Workforce Development must recover the benefits and the claimant must repay the benefits, even if the claimant was not at fault in receiving the benefits. Because this decision disqualifies Mr. Askvig for benefits effective March 24, 2016, the \$663.00 in benefits that he received for the three-week period of March 27, 2016 through April 16, 2016 constitutes an overpayment of benefits. Mr. Askvig must repay the benefits.

**DECISION:**

The March 31, 2016, reference 02, decision is reversed. The claimant separated from the employer on March 24, 2016 without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant was not temporarily unemployed or laid off during any week of his claim. The claimant did not meet the availability requirement during the weeks that ended March 26, April 2, and April 16, 2016. The claimant met the availability requirement during the week that ended April 9, 2016. The claimant is overpaid \$663.00 for the three-week period of March 27, 2016 through April 16, 2016. The claimant must repay the benefits. The employer's account has not been charged and will not be charged for benefits paid to the claimant.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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