

**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**

AMENDED

**Appeal Number: 05A-UI-01560-JTT
OC: 01/02/05 R: 04
Claimant: Respondent (2)**

**DAN WELLHOUSE
1508 ESPLANADE
DAVENPORT IA 52803**

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.

**ANNA ENTERPRISES
STAFFING SOLUTIONS
7600 UNIVERSITY AVE
CLIVE IA 50325**

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
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

Anna Enterprises filed a timely appeal from the February 2, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on March 15, 2005. Dan Wellhouse participated in the hearing. Anna Enterprises participated through Chandra Wimberly, Administrative Manager.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Dan Wellhouse was employed through Anna Enterprises temporary employment agency as a

full-time laborer from May 24, 2004 until October 13, 2004, when he voluntarily separated from the employment. Mr. Wellhouse's last work assignment through the temporary employment agency ended on August 20, 2004. The employment agency offered Mr. Wellhouse two additional work assignments on September 21, 2004, but Mr. Wellhouse declined both assignments. One of the assignments was at Central Iowa Grain on the East side of Des Moines and would have involved taking samples of grain. Mr. Wellhouse declined that assignment because of the hours of employment and lack of transportation, even though Mr. Wellhouse's only other assignment through the agency had been on the East side of Des Moines and Mr. Wellhouse had indicated a willingness to work third-shift hours when he applied to the agency. The second assignment Mr. Wellhouse was offered was a maintenance position at an Adel brickyard. Mr. Wellhouse declined that position because he believed it would be too physically taxing to work in a brickyard. Mr. Wellhouse apparently did not consider that the position was in maintenance rather than in production. On October 13, Mr. Wellhouse contacted the employment agency to advise that he had moved to Davenport and to provide an address for his W-2. Mr. Wellhouse requested that the agency place him on the "inactive list." This meant that Mr. Wellhouse no longer needed or wanted the assistance of the employment agency. After Mr. Wellhouse moved to Davenport, he was no longer available to work in the Des Moines area. The employment agency serves Des Moines and the surrounding area, but does not serve the Davenport area. Had Mr. Wellhouse stayed in the Des Moines area, the employment agency would have had additional employment assignments available for him. Mr. Wellhouse relocated to the Davenport area because he believed it would have better employment prospects than Des Moines.

Mr. Wellhouse received benefits in the total amount of \$1,947.73 during this period.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Wellhouse voluntarily quit his employment with good cause attributable to his employer.

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.

871 IAC 24.25(2) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(2) The claimant moved to a different locality.

Mr. Thompson has the burden of proving that his voluntary quit was for good cause attributable to the employer. Iowa Code Section 96.6-2 (amended 1998).

The evidence in the record establishes that while Mr. Wellhouse may have had compelling personal reasons for separating from the temporary employment agency and moving to Davenport, his voluntary leaving of his employment was not for good cause attributable to the employer. Indeed, at the time he separated from the employment, the temporary employment agency continued to have work available for him. Accordingly, benefits are denied.

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 \$1,947.73 in benefits Mr. Wellhouse received constitute an overpayment. Mr. Wellhouse will have to repay that amount.

DECISION:

The Agency Representative's decision dated February 2, 2005, reference 01, is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid \$1,947.73.

jt/kjf/tjc