

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARCUS L BROOKS

Claimant

APPEAL NO: 11A-UI-02903-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

OC: 11/14/10

Claimant: Respondent (2/R)

Section 96.5-1-j – Temporary Employment
871 IAC 24.26(15) – Temporary Employment
Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Advance Services, Inc. (employer) appealed a representative's February 28, 2011 decision (reference 03) that concluded Marcus L. Brooks (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 31, 2011. The claimant participated in the hearing. Holly Carter appeared on the employer's behalf and presented testimony from one other witness, Sue Peterson. During the hearing, Employer's Exhibits One and Two were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment?

FINDINGS OF FACT:

The employer is a temporary staffing agency. The claimant's first and only assignment through the employer began on January 17, 2011. He worked full time as a general laborer/assembly at the employer's Sioux City, Iowa business client through February 4, 2011. The assignment ended that date because the claimant called in absences as of February 7. There had been a tragic accident in North Carolina resulting in the death and injury of the claimant's brother and family. The claimant returned to Sioux City on February 15 and contacted the employer, who informed him that the business client did not wish the claimant back at that time due to the absence. However, the claimant then did not seek reassignment as required by the employer's policies to avoid being considered to be a voluntary quit. Rather, within about three or four days he moved to Ottumwa to provide additional assistance to his brother's remaining family.

The claimant established a claim for unemployment insurance benefits effective November 14, 2010. He reopened the claim by filing an additional claim effective February 6, 2011. The claimant has received unemployment insurance benefits after the separation.

REASONING AND CONCLUSIONS OF LAW:

The essential question in this case is whether there was a disqualifying separation from employment. An employee of a temporary employment firm who has been given proper notice of the requirement can be deemed to have voluntarily quit his employment with the employer if he fails to seek reassignment from the employer within three business days of the ending of the assignment. Iowa Code § 96.5-1-j; 871 IAC 24.26(15). The claimant did not seek reassignment, rather, he moved to another locality, albeit for good personal or family reasons. This is considered to be a voluntary quit of his employment with the employer, and the claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Leaving for good personal or family reasons still results in disqualification. 871 IAC 24.25(2), (20), (23). The claimant has not satisfied his burden. Benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

An issue as to whether the claimant was eligible for unemployment insurance benefits for the benefit week ending February 12, 2011 as being able and available for work that week arose as a consequence of the testimony in the hearing that the claimant was out of state through February 15, 2011. This issue was not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

DECISION:

The representative's February 28, 2011 decision (reference 03) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of February 15, 2011, 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue. The matter is also remanded to the Claims Section for investigation and determination of the able and available issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs