

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALEXANDER D CONNIE
Claimant

APPEAL NO. 14A-UI-09036-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

OC: 07/13/14
Claimant: Respondent (2)

Iowa Code Section 96.5(1) – Voluntary Quit

Iowa Code Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 28, 2014, reference 01, 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's June 27, 2014 separation was for good cause attributable to the employer. After due notice was issued, a hearing was held on September 18, 2014. Claimant Alexander Connie participated. Sarah Fiedler represented the employer. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant. The administrative law judge took official notice of the fact-finding materials for the purpose of determining whether the employer participated in the fact-finding interview and whether the claimant engaged in fraud or dishonesty in connection with the fact-finding interview. Exhibit One was received into evidence.

ISSUES:

Whether the claimant separated from the employer for a reason that disqualifies him for benefits or that relieves the employer of liability for benefits.

Whether the claimant has been overpaid benefits.

Whether the claimant must repay benefits.

Whether the employer's account may be charged for benefits already paid to the claimant or for future benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Team Staffing Solutions, Inc. is a temporary employment agency. Alexander Connie began getting work through Team Staffing in 2011. Mr. Connie's most recent assignment was a full-time, long-term assignment at Pearl City Garage in Muscatine. Mr. Connie started on April 1, 2014.

The Pearl City Garage ended the employment on June 27, 2014. Termination of the assignment was not based on misconduct. The work hours were 2:00 p.m. to 10:00 p.m., Monday through Friday, with occasional Saturdays as needed. At the time Mr. Connie worked in the assignment, he resided in Muscatine.

On June 30, 2014 a Team Staffing representative telephoned Mr. Connie at the number the employer had for him and left a message informing Mr. Connie that the assignment had ended. Mr. Connie did not get the message. Mr. Connie no longer had phone service at that time because he had not paid his cell phone bill and the service had been disconnected. Mr. Connie had been residing at a temporary shelter. After Mr. Connie had worked on June 27, 2014 he had decided to quit the assignment and the employment with Team Staffing. Mr. Connie's mother resides in Oskaloosa. Mr. Connie's mother was about to undergo knee surgery and requested Mr. Connie's assistance as she recovered. Mr. Connie had not given the employer any notice of his need to separate from the work assignment or the employment for the purpose of caring for his mother. By the end of July, or beginning of August 2014, Mr. Connie's mother had sufficiently recovered that she no longer needed Mr. Connie's assistance. After Mr. Connie worked on June 27, 2014 he made no further contact with Team Staffing, even after his mother had recovered. Mr. Connie had decided to remain in Oskaloosa and was not interested in returning to the employment.

In May 2013 Mr. Connie signed and received a copy of the employer's end-of-assignment agreement that obligated him to contact the employer within three working days of the completion of an assignment to request placement in a new assignment. The policy indicated that failure to make the required contact would be deemed a voluntary quit and could affect Mr. Connie's eligibility for unemployment insurance benefits. The policy was clear and concise. The policy was set for as a stand-alone policy.

Mr. Connie established a claim for unemployment insurance benefits that was effective July 13, 2014 while he was still engaged in assisting his mother. Workforce Development disbursed to Mr. Connie \$700.00 in benefits for the period of July 13, 2014 through August 9, 2014. When Mr. Connie applied for benefits, he had elected to have taxes withheld from benefits and to receive the benefits on a debit card. Mr. Connie received the debit card. The benefits for all four weeks were placed on the card on August 27, 2014. Mr. Connie had not used the card as of September 18, 2014.

Iowa Workforce Development conducted a fact-finding interview on August 21, 2014 to discuss Mr. Connie's separation from the employment. The employer participated in the fact-finding interview through Sarah Fiedler. The employer provided both a verbal statement and a written statement setting forth the particulars of Mr. Connie's separation from the employment. The employer provided a copy of the end-of-assignment agreement. The information from the employer was sufficient, barring rebuttal information from the claimant, to establish a disqualifying separation from the employment.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention

to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Iowa Code § 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.

Iowa Code § 96.5-1-c 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:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

Iowa Admin. Code r. 871-24.25(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 § 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 § 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.

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.

Mr. Connie made the decision to leave the assignment and the employment with Team Staffing, prior to Team Staffing's attempts to notify him that the assignment was done. Mr. Connie never received notice from the employer that the client business had ended the assignment. Mr. Connie had received proper notice of his obligation to contact the employer within three working days of completion of an assignment to request a further assignment, but he did not

fulfill that obligation. Mr. Connie asserts he needed to leave the employment for two reasons. The first is that his mother needed his assistance with her recovery from knee surgery. The second is that he did not have a permanent home in Muscatine. In any event, Mr. Connie moved to Oskaloosa. He did not return to the employment or to the employer. Even after his mother had recovered from her knee surgery, he did not return to the employer to offer his services. The weight of the evidence establishes a voluntary quit without good cause attributable to the employer that was effective June 26, 2014. Mr. Connie is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Connie must meet all other eligibility requirements.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant was paid unemployment insurance benefits, but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid \$700.00 in benefits for the period of July 13, 2014 through August 9, 2014. Though the claimant had not used the benefits that had been placed on the debit card as of the September 18, 2014 hearing, the benefits had indeed been credited to the debit card and the appropriate tax withholding amounts had been reported to the Iowa Department of Revenue and the Internal Revenue Service. Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

DECISION:

The Claims Deputy's August 28, 2014, reference 01, decision is reversed. The claimant voluntarily quit without good cause attributable to the employer effective June 27, 2014. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant is overpaid \$700.00 in benefits for the four-week period of July 13, 2014 through August 9, 2014. The claimant must repay those benefits. The employer's account will not be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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