

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JASON A LUCHTMAN**  
Claimant

**APPEAL NO: 20A-UI-11115-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**QPS EMPLOYMENT GROUP INC**  
Employer

**OC: 06/07/20**  
**Claimant: Respondent (2)**

Iowa Code section 96.5(1)j – Voluntary Leaving (Temporary Assignment)

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 3, 2020, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 30, 2020. The claimant did not respond to the hearing notice and did not participate in the hearing. Mai Lor, Unemployment Insurance Specialist and Alexis Adams, Branch Manager, participated in the hearing on behalf of the employer. Employer's Exhibits One and Two were admitted into evidence.

**ISSUES:**

The issue is whether the claimant voluntarily quit his job and whether the claimant sought reassignment from the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time assembler for QPS Employment Group last assigned at Succup Manufacturing from June 17, 2019 to May 25, 2020. The claimant worked Monday through Friday, 7:00 a.m. to 4:30 p.m. He was notified at the time of hire that overtime was required as well as Saturday overtime during the busy season. On May 20, 2020, the claimant walked off the job because he did not want to work overtime. The employer called and tested the claimant and he responded he was sent home because he would not work overtime and would not work Saturdays any longer. He told the employer he would return if the client would allow him to do so but he would not work overtime on Saturdays. On May 21, 2020, the employer texted the claimant asking if he returned to work but did not receive a response. On May 25, 2020, the claimant's wife texted the employer and said they were returning the claimant's equipment and provided her direct deposit information so they could receive the claimant's last check. The claimant never contacted the employer again. The employer had continuing work available for the claimant.

The employer has a policy that requires employees to report to the employer for further assignment within three days upon the completion of an assignment. The employer provides the employee a copy of the policy that the employee signs indicating he understands the policy.

After the assignment ended May 25, 2020, the claimant failed to report to the employer within three working days as required by written policy and he has not communicated with the employer regarding additional work.

The claimant has claimed and received unemployment insurance benefits in the amount of \$4,218.54 for the 20 weeks ending October 24, 2020.

The employer participated personally in the fact-finding interview through the statements of Unemployment Specialist Jennifer Yang.

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

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

Iowa Admin. Code r. 871-24.26.(22) 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"

(22) The claimant was hired for a specific period of time and completed the contract of hire by working until this specific periods of time had lapsed. 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 employees shall be considered to have voluntarily quit employment.

Iowa Code section 96.5(1)j provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. (1) 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.

(2) 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.

(3) For the purposes of this paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(b) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

The employer has established that the claimant voluntarily quit his job by walking off the job May 20, 2020, because he did not want to work overtime any longer. The remaining issue is whether the claimant sought reassignment from the employer as required by the employer's policy. The employer's policy requires employees to seek reassignment from the employer within three working days after the end of the assignment. The purpose of the policy is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of each temporary assignment so he may be reassigned and continue working. In this case, the claimant gave the employer no notice of his availability and, therefore, is considered to have quit the employment. Consequently, benefits must be denied.

As the claimant/appellant has been receiving benefits, pending a determination on the employer's appeal, the next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and

information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

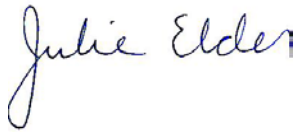
The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment 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 section 96.3(7)a, b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment in the amount of \$4,218.54 for the 20 weeks ending October 24, 2020, and the employer's account will not be charged for benefits paid.

**DECISION:**

The September 3, 2020, reference 01, decision is reversed. The claimant's separation was not attributable to the employer. Benefits are withheld until such time as the claimant works in and has been paid for wages equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer participated in the hearing within the meaning of the law. The claimant is overpaid benefits in the amount of \$4,218.54 for the 20 weeks ending October 24, 2020.



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Julie Elder  
Administrative Law Judge

November 2, 2020  
Decision Dated and Mailed

je/scn