

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LUKE A TABOR**  
Claimant

**APPEAL NO. 14A-UI-00628-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**L A LEASING INC**  
Employer

**OC: 03/17/13**  
**Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Overpayment of Benefits  
Section 96.5-1-j – Separation from Temporary Employment

**STATEMENT OF THE CASE:**

The employer filed an appeal from a representative's decision dated January 14, 2104, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on February 10, 2014. The claimant participated personally. The employer participated by Colleen McGuinty, unemployment benefits administrator, and Megan Francis, account coordinator. The record consists of the testimony of Colleen McGuinty; the testimony of Megan Francis; the testimony of Luke Tabor; and Employer's Exhibit 1. Official notice is taken of agency records.

**ISSUES:**

Whether the claimant was discharged for misconduct;  
Whether the claimant has been overpaid unemployment insurance benefits;  
Whether the claimant is required to repay unemployment insurance benefits;  
Whether the employer's account should be charged for benefits paid to the claimant.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:  
The employer is a temporary staffing agency. The claimant was hired on December 10, 2013, for an assignment at Plastic Products. The claimant worked for approximately one hour and walked off the job. The claimant did not want to do the job he was being asked to do. The claimant did not request another assignment. He signed a separate form that stated that if he did not contact the employer within three workdays after the end of an assignment and ask for another assignment, he would be considered a voluntary quit. The claimant was given a copy of that form.

The claimant established an original claim for unemployment insurance benefits with an original claim date of March 17, 2013. He re-established his claim for the week ending December 21, 2013, and was paid a total amount of \$199.82 in unemployment insurance benefits. The

employer participated in the fact finding by providing a written statement with all pertinent information and giving the names of two individuals with firsthand knowledge of the claimant's claim for unemployment insurance benefits.

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

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.

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 section 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.

The claimant is not eligible for unemployment insurance benefits. The claimant walked off the job after being on the job for approximately one hour. Job abandonment under these circumstances is a voluntary quit without good cause attributable to the employer. Even if the claimant could somehow claim that the employer initiated the separation, he is still a voluntary quit because he did not request another assignment within three working days after the end of the assignment on December 10, 2013. Benefits are denied.

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 process, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

**DECISION:**

The decision of the representative dated January 14, 2014, reference 01, is reversed. Unemployment insurance benefits shall be withheld until 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 has been overpaid unemployment insurance benefits in the amount of \$199.82. Those benefits must not be repaid. The employer's account will not be charged.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs