

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MELVIN PEACOCK**  
Claimant

**APPEAL NO: 08R-UI-04808-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SUPREME STAFFING INC**  
Employer

**OC: 12/16/07 R: 03  
Claimant: Respondent (2)**

Iowa Code § 96.5-1-j - Voluntary Quit of Temporary Employment  
Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Supreme Staffing, Inc. (employer) appealed an unemployment insurance decision dated January 14, 2008, reference 01, which held that Melvin Peacock (claimant) was eligible for unemployment insurance benefits. Administrative Law Judge Hillary conducted an initial hearing on this matter in appeal 08A-UI-00598-H2T in which benefits were denied. The claimant appealed the decision but the recording of the hearing could not be transcribed due to a bad recording. The Employment Appeal Board remanded for a new hearing in an order dated March 11, 2008. Administrative Law Judge Ackerman conducted a second hearing on March 27, 2008 in which the claimant did not participate. However, Administrative Law Judge Ackerman learned after the hearing that the claimant had requested a postponement prior to the hearing but the message was not properly relayed. Consequently, a new hearing notice was sent out to the parties and a third hearing was conducted in this matter on April 2, 2008.

The statement of the case in Appeal Number 08O-UI-02468-BT states, "After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was scheduled for March 27, 2008. The claimant was granted a postponement, so the hearing was rescheduled and held on April 2, 2008." Both parties participated in the April 2, 2008 hearing which began at 10:01 a.m. and ended at 10:16 a.m. The claimant appealed the decision to the Board again and a transcript of the hearing was purportedly completed. However, the March 27, 2008 hearing was transcribed, not the actual April 2, 2008 hearing. The Board remanded in an order dated May 13, 2008 and the first sentence of the remand decision states, "A hearing in the above matter was held April 2, 2008 in which the claimant did *not [sic]* participate." The Board remanded for the limited purpose of developing the record regarding the employer's compliance with Iowa Code § 96.5(1)(j). After hearing notices were mailed to the parties' last-known addresses of record, a fourth telephone hearing was scheduled and held on June 4, 2008. The claimant participated in the hearing. The employer participated through Mike Riehle, Office Manager. 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:**

The issue is whether the claimant sought reassignment within three working days of the end of his last assignment and whether the claimant was overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed with this temporary employment agency from August 3, 2007 through December 17, 2007 when he was discharged. At the time of hire, the claimant signed a copy of the employer's rules and guidelines, which is a separate document from the employment application. The notification document advised the claimant that he had to make himself available for work in order to keep his name on the active roster. The document also advised the claimant he was required to contact the employer within three working days of the completion of an assignment. The notification served to notify the employer the assignment was complete and that the claimant was available for additional assignments. The document advised the claimant if he failed to contact the employer within three days of the completion of his assignment, he would be considered to have left work voluntarily without cause.

The claimant was given the yellow copy of this document but did not remember what it said as he signed a lot of documents at the time of hire. He had been assigned to work at American Bottling for the employer. American Bottling hired many of its temporary employees and the claimant filled out a job application for a permanent job. Brenda from American Bottling notified the employer on December 10, 2007 that the claimant was going to be offered a job and would no longer be needed as a temporary employee. On December 17, 2007, Brenda notified the employer that the claimant was not hired because the information on his background check did not match the information on his application. Brenda reported that the claimant was notified of this fact on December 13, 2007 but he did not contact the employer for additional work until December 20, 2007. The employer considered that he voluntarily quit when the claimant failed to contact the agency within three working days of the completion of his assignment.

The claimant filed a claim for unemployment insurance benefits effective December 16, 2007 and has received benefits after the separation from employment.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer or if the employer discharged him for work-connected misconduct. See Iowa Code §§ 96.5-1 and 96.5-2-a. Iowa Code § 96.5-1-j provides that individuals employed by a temporary agency must contact their employer within three working days after the completion of a work assignment or they will be considered to have voluntarily quit.

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.

The greater weight of the evidence indicates that the employer's end-of-assignment notification policy satisfies the requirements of Iowa Code § 96.5(1)(j). The claimant was notified in writing of his requirement to contact the employer within three working days after the completion of an assignment. He was given a signed copy of this document which is separate from the employment application. He was advised his failure to contact the employer within three working days would be considered as a voluntary quit without cause and could result in the denial of unemployment insurance benefits.

The evidence indicates the claimant knew or should have known he was required to contact the employer after the completion of his assignment. His assignment ended when he was not hired by American Bottlers on December 13, 2007 but he did not contact the employer until December 20, 2007. The claimant did not satisfy the requirements of Iowa Code § 96.5-1-j and is disqualified from receiving unemployment insurance benefits as of December 16, 2007.

Iowa Code § 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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The unemployment insurance decision dated January 14, 2008, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$896.00.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs