

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JIMMIE JACKSON
Claimant

APPEAL NO: 16A-UI-10204-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WORKSOURCE INC
Employer

OC: 08/28/16
Claimant: Respondent (2)

Section 96.5(1) – Voluntary Leaving
871 IAC 24.26(19 & 22) – Voluntary Leaving
Section 96.5-1-j – Reassignment from Employer
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF CASE:

The employer filed a timely appeal from the September 19, 2016, 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 4, 2016. The claimant did not respond to the hearing notice and did not participate in the hearing. Jessica Swift, Account Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left his employment and whether he 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 welder for Worksource last assigned to PDM Metals from June 29, 2016 to August 30, 2016. The claimant's assignment ended due to attendance issues.

The claimant was scheduled to work August 13, 2016, but was a no-call no-show. Originally he stated he did not know he had to work but then he stated he did not have a contact number to notify the employer he would be absent that day. The employer issued the claimant a verbal warning August 15, 2016. Generally, one no-call no-show results in termination of employment but the client and the employer decided to give the claimant another chance. On August 29, 2016, the claimant was a no-call no-show. The employer tried multiple times to call the claimant and left him voice mail and text messages but the claimant did not return its call until two and one-half hours after the start of his shift August 30, 2016. The employer asked him why he failed to call or show up for work August 29, 2016, but the claimant did not provide an explanation. The employer notified the claimant that the client did not want him to return and his assignment ended. The client gave the claimant a good reference, however, and as a result the employer was willing to continue working with the claimant.

The employer's policy requires employees to contact it within three business days of the completion of an assignment. The claimant called the employer and stated he was available for another assignment September 6, 2016. On September 7, 2016, the employer left the claimant a voice mail indicating it had another assignment for him. The claimant called the employer September 8, 2016, and the employer offered him a welding assignment at Lakeside Daycare starting September 9, 2016. The claimant accepted the assignment but was then a no-call no-show. He called later that day and left a voice mail in the employer's general voice mailbox stating he had an interview. The employer called him back and stated it had a temp to hire welding position available at Auto Jet and they wanted to talk to the claimant. The claimant seemed interested in the job and the employer was confident the claimant would be hired. On September 13, 2016, the employer called the claimant and he stated he needed to take a drug test for another potential position and the employer told him to call as soon as he completed the test so he could be scheduled for an interview for the position at Auto Jet. The claimant never contacted the employer again. The employer called and left voice mail messages for the claimant, emailed him, and sent him text messages but the claimant never replied.

The claimant has claimed and received unemployment insurance benefits in the amount of \$2,682.00 for the six weeks ending October 8, 2016.

The employer personally participated in the fact-finding interview through the statements of Account Manager Jessica Swift.

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 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)-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. (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 client ended the claimant's assignment following two no-call no-show absences in August 2016. The claimant did not offer a reasonable explanation for either absence and knew or should have known after being verbally warned August 15, 2016, following his first no-call no-show, that another would result in the end of the assignment.

Typically for this employer one no-call no-show absence is grounds for the employer conclude the claimant has voluntarily quit but the client gave the claimant a good reference and the employer decided to continue working with him. The claimant, however, failed to contact the employer within three working days following the completion of his assignment and notify the employer he was available for work as required by the employer's policy. Despite the claimant's failure to follow the employer's policy, the employer offered him an assignment to start September 9, 2016, but the claimant was again a no-call no-show. The employer gave him still another chance with Auto Jet but the claimant failed to contact the employer to set up the interview for that position.

The claimant's no-call no-show absences, his failure to contact the employer within three working days of the end of his assignment, and his refusal to follow through with assignments and interviews the employer secured for him demonstrates the claimant voluntarily left his employment. He has not shown that his leaving was for good cause attributable to the employer as that term is defined by Iowa law. Therefore, benefits are denied.

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 and the employer will not be charged for benefits paid.

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. In this case, the claimant has received benefits but was not eligible for those benefits. While there is no evidence the claimant received benefits due to fraud or willful misrepresentation, the employer participated in the fact-finding interview personally through the statements of Account Manager Jessica Swift. Consequently, the claimant's overpayment of benefits cannot be waived and he is overpaid benefits in the amount of \$2,682.00 for the six weeks ending October 8, 2016.

DECISION:

The September 19, 2016, reference 01, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he 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 received benefits but was not eligible for those benefits. The employer personally participated in the fact-finding interview within the meaning of the law. Therefore, the claimant is overpaid benefits in the amount of \$2,682.00 for the six weeks ending October 8, 2016.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/rvs