

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHNATHON FOSTER**  
Claimant

**APPEAL NO: 11A-UI-14293-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE SERVICES**  
Employer

**OC: 11/07/10**  
**Claimant: Respondent (2/R)**

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

**STATEMENT OF THE CASE:**

Advance Services (claimant) appealed an unemployment insurance decision dated October 21, 2011, reference 05, which held that Johnathon Foster (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 28, 2011. The claimant participated in the hearing. The employer participated through Holly Carter, Unemployment Specialist and Amy Roefer, Office Manager. Employer's Exhibits One and Two were admitted into evidence. 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 is disqualified for failure to contact the temporary employment agency within three working days after the completion of his assignment to request additional work, when and if, notified of this requirement at the time of hire.

**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 originally hired as a temporary worker on September 23, 2009. He was rehired on July 1, 2011 and on that date, he signed an assignment policy which advised him of the requirement to check in for additional work after the completion of an assignment. The employer requires employees to check in within three working days after an assignment ends to provide the employer notification of the claimant's availability and to request additional work. Failure to do so would be considered as a voluntary quit and the claimant was given a copy of the availability statement, which is not part of the application or contract of employment.

The claimant was assigned to work at Pella beginning July 5, 2011 as a general laborer. He also signed a job assignment sheet which again reminded him that he had to check in for work within three days after the end of an assignment. Pella asked that the claimant be taken off his assignment on September 21, 2011 due to poor attendance. Office Manager Amy Roefer

spoke to the claimant on September 21, 2011 and told him that assignment was over. The claimant did not request additional work on that date. He stopped in the office on October 5, 2011 to drop off his badge and asked about his unemployment insurance claim. Ms. Roefer referred him to Holly Carter, the employer's unemployment specialist and the claimant was subsequently referred to Iowa Workforce Development.

The claimant filed a claim for unemployment insurance benefits effective November 7, 2010 and has received benefits after the separation from employment.

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

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits. The employer herein is a temporary employment agency and temporary employment agencies are governed by Iowa Code § 96.5-1-j, which places specific restrictions on both the employer and the employee with regard to qualification for unemployment insurance benefits after a voluntary separation.

Both the claimant and the employer have an affirmative obligation which will affect whether or not unemployment benefits will be granted. The employer has the obligation to draft a policy that complies with the requirements of the statute. The employer must advise the employee in writing of the three-day notification rule. The employer must also notify the employee that he may be disqualified from receiving unemployment insurance benefits if he fails to contact the employer and request additional work. Iowa Code § 96.5-1-j.

The claimant has an obligation to actually make contact with the employer to let the employer know, not only that the assignment has ended, but also to indicate that he desires a further assignment. Even if the employer is aware the assignment has ended, that does not relieve the employee from indicating he is available to work and from requesting additional work. The evidence indicates the claimant knew or should have known he was required to request additional work after his assignment was over but he failed to do so. Consequently, he did not satisfy the requirements of Iowa Code § 96.5-1-j and is disqualified from receiving unemployment insurance benefits as of September 24, 2011.

Iowa Code § 96.3(7) 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. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

**DECISION:**

The unemployment insurance decision dated October 21, 2011, reference 05, 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/css