

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORI E JARVIS

Claimant

APPEAL NO. 11A-UI-04155-PT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMPRO SERVICES

Employer

OC: 02/06/11

Claimant: Respondent (2R)

871 IAC 24.26(19) – Voluntary Quit Spot or Casual Labor
Section 96.5(1)j – Voluntary Leaving – Temporary Employment
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

Employer filed an appeal from the March 25, 2011, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on April 26, 2011. The claimant failed to respond to the hearing notice and did not participate. The employer participated through Colleen McGuinty, Unemployment Benefits Administrator and Elizabeth Gunnell, Account Manager.

ISSUE:

The issue is whether claimant was voluntarily quit employment without good cause attributable to the employer and whether claimant is overpaid.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant was employed through the employer performing various temporary work from May 2009 through February 14, 2011. The claimant completed this assignment and but did call the employer to ask if they had additional work as she agreed to do in a separate signed statement at the time she was hired.

REASONING AND CONCLUSIONS OF LAW:

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 a temporary employee and is required to notify the temporary agency with three working days of the end of the assignment and of the availability to accept reassignment. In this case, the claimant gave no such notice. Benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue

of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The issue of whether claimant is overpaid is remanded for determination.

DECISION:

The March 25, 2011, reference 01, decision is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. The issue of whether claimant is overpaid is remanded for determination.

Ron Pohlman
Administrative Law Judge

Decision Dated and Mailed

rrp/css