

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEREMY S LAWR

Claimant

APPEAL NO. 07A-UI-04592-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

**OC: 03/18/07 R: 03
Claimant: Respondent (2)**

Section 96.5-1-j – Voluntary Quit of Temporary Agency
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 23, 2007, reference 04, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on May 22, 2007. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Tracy Davis participated in the hearing on behalf of the employer. Exhibit One was admitted into evidence at the hearing.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. The claimant worked on a full-time assignment at Farley's & Sathers Candy Company from November 14, 2006, to November 22, 2006. When the claimant was hired, he signed a statement that he would be considered to have voluntarily quit employment if he did not contact the employer within three working days after the completion of a job assignment and request a new assignment.

The claimant called in sick on November 15 and 16. He called in on November 21 and stated that he would not be at work because his son was sick. Farley's & Sathers Candy Company asked that the claimant be removed from the assignment because he had three absences within the first 30 days, in violation of company policy. The claimant was notified by the employer's office manager on November 22 that his assignment ended due to attendance problems.

Even though the assignment ended, his employment with the employer was not terminated. The claimant did not contact the employer within three working days after his assignment ended to seek a new assignment.

The claimant filed a new claim for unemployment insurance benefits with an effective date of March 18, 2007. The claimant filed for and received a total of \$1,365.00 in unemployment insurance benefits for the weeks between March 18 and May 5, 2007.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The claimant's absences were due to illness and were properly reported. He is not subject to disqualification based on the reasons for his removal from his assignment.

The next issue is whether the claimant is disqualified for voluntarily leaving employment not contacting the employer after his initial assignment had been completed. Iowa Code section 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 and seek a new assignment or they will be considered to have voluntarily quit employment without good cause attributable to the employer, provided that the employer has given them a statement to read and sign that advises them of these requirements.

The claimant is subject to disqualification under Iowa Code section 96.5-1-j because he did not contact the employer within three days after the completion of his work assignment and seek a new assignment.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

Iowa Code section 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.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid \$1,365.00 in benefits for the weeks between March 18 and May 5, 2007.

DECISION:

The unemployment insurance decision dated April 23, 2007, reference 04, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant was overpaid \$1,365.00 in unemployment insurance benefits, which must be repaid.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw