

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD L STRADT
Claimant

APPEAL NO: 09A-UI-18351-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RIVERSIDE STAFFING SERVICES INC
Employer

OC: 02/01/09

Claimant: Respondent (2/R)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Riverside Staffing Services, Inc. (claimant) appealed a representative's December 2, 2009 decision (reference 04) that concluded Richard L. Stradt (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 15, 2010. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Karrie Minch appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant began his first and only assignment with the employer on August 27, 2009. He worked full time with the employer's manufacturing business client in a temp-to-hire position. His last day on the assignment was September 30, 2009. The assignment ended because the claimant determined to end his assignment. He was a no-call/no-show for scheduled work on the assignment on October 1 and October 2. When the employer contacted him on October 2 to inquire why he had not reported for work, the claimant informed the employer that he had decided to quit the assignment as he was doing the "grunt work." He had not previously made any complaints or sought to have his assignment changed. Continued work on the assignment was available to him indefinitely.

The claimant established an unemployment insurance benefit year effective February 1, 2009. He reopened the claim by filing an additional claim effective October 4, 2009. The claimant has received unemployment insurance benefits after the separation.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1.

Rule 871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The claimant has not satisfied his burden. A person who quits employment without good cause attributable to the employer must be disqualified from further benefits even if that person has given up unemployment insurance benefits to accept the work which was subsequently considered unsuitable. Taylor v. Iowa Department of Job Service, 362 N.W.2d 534 (Iowa 1985). Benefits are denied.

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. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's December 2, 2009 decision (reference 04) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of October 1, 2009, benefits are withheld until such time as the claimant has worked in and 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 and whether the claimant is eligible for a waiver of any overpayment.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css