

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SIMON B ATARY
Claimant

APPEAL NO. 14A-UI-02119-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QPS EMPLOYMENT GROUP INC
Employer

OC: 10/27/13
Claimant: Respondent (2)

Section 96.5-1 - Voluntary Quit
Section 96.3-7 - Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 2, 2014, reference 02, that concluded he was discharged but not for work-connected misconduct. A telephone hearing was held on March 31, 2014. The parties were properly notified about the hearing. Simon Atary participated in the hearing with the assistance of an interpreter, Vivian Salama. Rhonda Hefter participated in the hearing on behalf of the employer with a witness, Sandy Hernandez.

ISSUES:

Did Simon Atary voluntarily quit employment without good cause attributable to the employer?
Was Atary overpaid unemployment insurance benefits, is he required to repay the overpayment, and is the employer subject to charge for benefits paid to the claimant?

FINDINGS OF FACT:

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. When Simon Atary was hired, he was given a statement to read and sign that said 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.

Atary started working for the employer in February 2013. His last assignment was working full time at Berry Plastics, in Des Moines, Iowa, from July 1, 2013, to January 13, 2014.

Atary became sick at Berry Plastics on January 13. The supervisor at Berry Plastics told him to go home after an hour of work and said when he was better he could return to work. That same day, the claimant went to the QPS office and notified employees that he was sent home sick. He asked for his paycheck, but he did not ask for a new assignment.

Atary never contacted QPS again because he continued to be sick. He has contacted other employers about employment but has not contacted QPS to see if they have work for him.

The claimant filed for and received a total of \$2,830.98 in unemployment insurance benefits for the weeks between January 12 and April 5, 2014.

Both the employer and the claimant participated in the fact-finding interview held in this case on February 11, 2014.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a.

Iowa Code § 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.

Atary was given a statement, which he read and signed, stating he was to notify the employer within three days of the completion of a work assignment to seek another assignment or he would be considered to have voluntarily quit employment without good cause attributable to the employer. He was not discharged or removed from the work assignment when he was sent home for one day by the supervisor at Berry Plastics on January 13. Under the law, the claimant was obligated to let the QPS know he was not planning to return to work at Berry Plastics and was required to seek another assignment within three days. Atary voluntarily quit employment because he never contacted the employer again about returning to Berry Plastics or any other assignment. The fact that he said he was quitting does not change the outcome. His actions in not contacting QPS about any additional work is sufficient

The unemployment insurance rules provide that claimants are not disqualified if they have good cause for failing to notify the staffing company and notified the company at the first reasonable opportunity. 871 IAC 24.26(15)b. Good cause is a substantial and justifiable reason that a reasonable person desiring to remain employed would find to be an adequate justification for not notifying the employer, including the employer going out of business or being closed for vacation, snowstorms, telephone lines down, hospitalization, or other substantial reason. 871 IAC 24.26(15)c. Atary never contact the employer again to seek another assignment and has not shown good cause for failing to do so. He claimed he was looking for work, but QPS, the employer for whom he had worked in the past, would be the best place to find another job yet he made no effort to contact them.

Atary could also show he was qualified for benefits by showing he satisfied the conditions of Iowa Code § 96.5-1-d.

The unemployment insurance law provides that individual is qualified to receive benefits if he: (1) left employment because of illness, injury or pregnancy with the advice of a licensed and practicing physician, (2) notified the employer that he needed to be absent because of the illness or injury, and (3) offered to return to work for the employer when recovery was certified by a licensed and practicing physician, but his regular work or comparable suitable work was not available. Iowa Code § 96.5-1-d.

Atary has not shown that he left work with the advice of a physician or that he offered to return to work for the employer when recovery was certified by a licensed and practicing physician

The unemployment insurance law generally 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. But a claimant is not required 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 § 96.3-7-a, -b.

Atary received benefits but has been denied benefits as a result of this decision. He, therefore, was overpaid \$2,830.98 in benefits.

Because the employer participated in the finding interview, Atary is required to repay the overpayment and the employer's account will not be charged for benefits.

DECISION:

The unemployment insurance decision dated February 2, 2014, reference 02, is reversed. Simon Atary 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. He was overpaid \$2,830.98 in benefits, which he is required to repay. The employer's account will not be charged for benefits paid to Atary.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css