

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JOSH M HILL
Claimant

APPEAL NO. 18A-UI-09155-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING INC
Employer

OC: 07/29/18
Claimant: Respondent (2)

Iowa Code Section 96.5(1)(j) – Separation From Temporary Employment

Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 21, 2018, reference 08, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on the Benefits Bureau deputy's conclusion that the claimant was discharged on May 14, 2018 for no disqualifying reason. After due notice was issued, a hearing was held on September 19, 2018. Claimant Josh Hill participated. Colleen McGuinty represented the employer and presented additional testimony through Hannah Chabers. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant. The administrative law judge took official notice of the documents submitted for and generated in connection with the fact-finding interview for the limited purpose of ruling on whether the employer participated in the fact-finding interview and whether the claimant engaged in fraud and/or intentional misrepresentation in connection with the fact-finding interview.

ISSUES:

Whether the claimant's separation from the temporary employment agency was for good cause attributable to the employer.

Whether the claimant has been overpaid benefits.

Whether the claimant must repay benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency. The claimant commenced the employment relationship in February 2018. On January 30, 2018, the claimant signed a stand-alone Availability Statement that obligated him to contact the temporary employment agency within

three working days of completing an assignment to request placement in a new assignment or be deemed to have voluntarily quit and risk disqualification for unemployment insurance benefits. The employer provided the claimant with a copy of the policy he signed. The claimant began his most recent assignment on May 1, 2018 and last performed work in the assignment on Friday, May 25, 2018. The assignment was full-time, temp-to-hire. The work hours were 7:00 a.m. to 3:00 p.m., Monday through Friday. After the claimant completed his shift on Friday, May 25, 2018, he was next scheduled to work on Tuesday, May 29, 2018. The claimant was absent that day without notifying the temporary employment firm or the client business. The claimant was aware that the temporary employment firm required notice 30 minutes prior to the scheduled start of the shift and that the client business required notice one hour prior to the scheduled start of the shift. In response to the no-call/no-show absence, the client business ended the assignment. On the evening of May 29, 2018, the temporary employment firm called the claimant's phone number and spoke to his wife. The employer representative left a message with the claimant's wife, directing the claimant not to return to the assignment and to contact the temporary employment agency. The claimant made no further contact with the temporary employment agency.

The claimant established an original claim for benefits that was effective July 29, 2018 and received \$1,974.00 in benefits for the period of August 5, 2018 through September 22, 2018. The employer is a base period employer.

On August 16, 2018 Iowa Workforce Development held a fact-finding interview concerning the claimant's separation from the employer. The employer participated in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)j provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. (1) 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.

(2) 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.

(3) For the purposes of this paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(b) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

Iowa Admin. Code r. 871-24.26(19) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

The evidence in the record indicates a May 29, 2018 separation that was without good cause attributable to the temporary employment firm. The claimant completed an assignment on May 29, 2018, when the client business ended the assignment. The employer notified the claimant, via a message left with his wife, on May 29, 2018 not to return to the assignment and to contact the temporary employment firm. The claimant made no further contact. The employer's Availability Statement complies with Iowa Code section 96.5(1)(j). The claimant signed the policy statement. The employer provided the claimant with a copy of the policy statement. The claimant failed to contact the employer within three working days of completing the assignment. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have 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) and (b).

The claimant received \$1,974.00 in benefits for the period of August 5, 2018 through September 22, 2018. This decision disqualifies the claimant for those benefits. The benefits constitute an overpayment. The employer participated in the fact-finding interview. The claimant is required to repay the overpaid benefits. The employer's account shall be relieved of charges for benefits, including charges for benefits already paid.

DECISION:

The August 21, 2018, reference 08, decision is reversed. The claimant's separation from the temporary employment agency was without good cause attributable to the temporary employment agency. The separation was effective May 29, 2018. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant is overpaid \$1,974.00 in benefits for the period of August 5, 2018 through September 22, 2018. The claimant is required to repay the overpaid benefits. The employer's account shall be relieved of charges for benefits, including charges for benefits already paid.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs