

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**CRAIG C TAYLOR**  
Claimant

**APPEAL NO. 19A-UI-02679-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ATTERRO INC**  
Employer

**OC: 02/24/19**  
**Claimant: Respondent (1)**

Section 96.5-1-j – Separation from Temporary Employer  
Section 96.5-1 - Voluntary Quit  
Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Atterro (employer) appealed a representative's March 20, 2019, decision (reference 01) that concluded Craig Taylor (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 17, 2019. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Victoria Patterson, Operations Manager, and Matt Johnson, Managing Director. Exhibit D-1 was received into evidence. The employer offered and Exhibit 1 was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary employment service. The claimant performed services from November 6, 2018, through February 6, 2019. He signed a digital document on October 25, 2018, indicating he was to contact the employer immediately by telephone following the completion of an assignment "for the purpose of determining eligibility and availability of additional work assignments as well as other administrative purposes". The document did indicate the consequences of a failure to notify the employer within three business days. The claimant was not given a copy of the document which was not separate from the contract for hire. The employer did not issue the claimant any warnings during his employment

In December 2018, the employer's payroll department telephoned the claimant and informed him that he had been overpaid wages at one of his assignments. The employer said that the wages would be recouped from the claimant's wages at an unknown point in the future. On February 1, 2019, the employer direct deposited the claimant's wages. They withheld \$200.00 for the overpaid wages and paid him \$137.73 in net wages.

The employer assigned the claimant to work at Tone Spices starting on February 4, 2019. He traveled from his home in Johnston, Iowa, to the workplace in Ankeny, Iowa. On Wednesday, February 6, 2019, the claimant talked to the operations manager on the telephone about the withholding of wages and the claimant's lack of funds. The claimant remembered telling the employer he would be absent from work after February 6, 2019, because he was unable to afford gas to travel to work. The employer did not have a record of him reporting his absences.

On Monday, February 11, 2019, the managing director called the claimant and ended his assignment due to two absences without reporting. The claimant worked his last assignment on February 6, 2019, but did not seek reassignment from the employer.

The claimant filed for unemployment insurance benefits with an effective date of February 24, 2019. The employer provided the name and number of Judi Vilaylak as the person who would participate in the fact-finding interview on March 19, 2019. The fact finder called Ms. Vilaylak but she was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer did not respond to the message.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

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

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984).

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. The employer has not established that the claimant was warned that further unexcused absences could result in termination of

employment. In addition, there were mitigating circumstances regarding the final absences. The claimant was absent as a result of the employer's error in overpayment of wages and later lump sum recoupment from a single paycheck. He could not afford gas money because of the employer's actions. The employer admits to talking to the claimant about the issues of the withholding on February 6, 2019. The absences were not willful.

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.

Under the Iowa Code the employer must advise the claimant of the three day notice requirement and give the claimant a copy of that requirement. The notice requirement must be separate from the contract for hire. The employer did not provide the claimant with the proper notice requirements and has, therefore, failed to satisfy the requirements of Iowa Code Section 96.5-1-j. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's March 20, 2019, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs