

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DEAMBRE M ZANDERS**  
Claimant

**APPEAL NO. 11A-UI-09214-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WORKSOURCE INC**  
Employer

**OC: 06/12/11  
Claimant: Respondent (2-R)**

Section 96.5(1)j – Quit/Temporary

**STATEMENT OF THE CASE:**

The employer, Worksource, filed an appeal from a decision dated July 13, 2011, reference 01. The decision allowed benefits to the claimant, Deambre Zanders. After due notice was issued a hearing was held by telephone conference call on August 4, 2011. The claimant provided a telephone number to the Appeals Section. That number was dialed at 9:58 a.m. and the only response was a voice mail. A message was left indicating the hearing would proceed without the claimant's participation unless he contacted the Appeals Section prior to the close of the record. By the time the record was closed at 10:09 a.m., the claimant had not responded to the message and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. The employer participated by Branch Manager Nancy Parli.

**ISSUE:**

The issue is whether the claimant quit work with good cause attributable to the employer.

**FINDINGS OF FACT:**

Deambre Zanders was employed by Worksource from May 23 until July 12, 2011. At the time of hire, the claimant signed an "end of assignment" information form. The document notified him he was required to contact Worksource within three working days of the end of any assignment to request more work. Failure to do so would be considered a voluntary quit.

Mr. Zander's last assignment was with the State of Iowa and ended on July 7, 2011. He did not contact the employer to request a new assignment within three working days. On July 12, 2011, he sent a text message to Jessica Swift declaring the employer had shorted him on his last check. She tried to call him but he would not answer, so she texted him back stating she would be happy to resolve the matter if he would come in. He texted her back making threats and saying he hated her. She tried to call again and he would not answer and again she texted back asking him to come in to resolve the pay issue. He did not respond and did not come in.

Deambre Zanders has received unemployment benefits since filing a claim with an effective date of June 12, 20011.

The record was closed at 10:09 a.m. At 10:36 a.m. the claimant called. He had elected to use a cell phone to participate in the hearing but had the cell phone turned off at the time the hearing was scheduled and did not receive the judge's call when it was placed at 9:58 a.m.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5-1-j provides:

An individual shall be disqualified for benefits:

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. 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.

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.

For the purposes of this paragraph:

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

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

The claimant was advised of his responsibility to contact the employer within three working days of the end of each assignment to request more work. He failed to do this. Whatever his concerns were about his pay, he made no attempt to actually resolve the issue when invited to do so. Instead, he issued threats. The record establishes the claimant quit without good cause attributable to the employer under the provisions of the above Administrative Code section.

The next issue is whether the record should be reopened. The judge concludes it should not.

871 IAC 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

The claimant did receive the notice of the hearing but did not read the instructions which recommended against the use of cell phones. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. The claimant's decision to use a cell phone, and then have it turned off at the time the hearing was scheduled, does not constitute good cause to reopen the hearing. Therefore, the claimant's request to reopen the hearing is denied.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

**DECISION:**

The representative's decision of July 13, 2011, reference 01, is reversed. Deambre Zanders is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw