

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JASON C SMITH
308 W FILMORE
PO BOX 65
AFTON IA 50830

ADVANCE SERVICES INC
c/o TALX UCM SERVICES
PO BOX 66864
ST LOUIS MO 63166-6865

Appeal Number: 04A-UI-11124-HT
OC: 09/05/04 R: 03
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1-j – Quit/Temporary
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, Advance Services, Inc. (Advance), filed an appeal from a decision dated October 8, 2004, reference 03. The decision allowed benefits to the claimant, Jason Smith. After due notice was issued, a hearing was held by telephone conference call on November 8, 2004. The claimant participated on his own behalf. The employer participated by Human Resources Coordinator Tracy Smith and was represented by UC Express in the person of Roxanne Bekaert.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Jason Smith began his most recent period of employment with Advance on July 23, 2004. He was provided with the employer's policies and rules, which included a notice which requires employees to maintain employment by contacting the employer within three days of the end of each assignment. The notice further stated failure to do this would result in the employee being considered a voluntary quit.

Mr. Smith was assigned to Cardinal Glass and the assignment ended on August 30, 2004. He did not contact Advance because he did not like working for this temporary agency and it was his intention to quit, although he never notified anyone of this. He intended to seek work elsewhere.

Jason Smith has received unemployment benefits since filing a claim with an effective date of September 5, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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.

871 IAC 24.25(3) provides:

(3) The claimant left to seek other employment but did not secure employment.

The claimant was aware of the requirement to maintain his employment by notifying the temporary agency within three days of the end of any assignment and requesting more work. He did not do this as it was his intent to quit and seek employment elsewhere. Under the provisions of the above Administrative Code section, this is a voluntary quit without good cause attributable to the employer. He is disqualified.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of October 8, 2004, reference 03, is reversed. Jason Smith is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible. He is overpaid in the amount of \$1,904.00.

bgh/b