IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

MICHAEL DUNN
Claimant

APPEAL NO: 13A-UI-11341-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RANDSTAD GENERAL PARTNER US LLC
Employer

**OC: 06/23/13
Claimant: Respondent (2)**

Iowa Code § 96.5-1-j - Voluntary Quit of Temporary Employment
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Randstad General Partner US, LLC (employer) appealed an unemployment insurance decision dated September 27, 2013, reference 06, which held that Michael Dunn (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 7, 2013. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which he could be contacted, and therefore, did not participate. The employer participated through Jess Lawinger, Staffing Consultant and Kathy O'Leary, Employer Representative. Employer's Exhibits One and Two were admitted into evidence.

ISSUES:

The issues are whether the claimant is disqualified benefits, whether he was overpaid unemployment insurance benefits, whether he is responsible for repaying the overpayment and whether the employer's account is subject to charge.

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 agency and the claimant was hired on January 4, 2013. At the time of hire, he signed and was given a copy of the employment policies and procedures which advised him of the requirement to check in for additional work after the completion of an assignment. The employer requires employees to check in within three working days after an assignment ends to provide the employer notification of the claimant's availability and failure to do so would be considered as a voluntary quit.

The claimant's last assignment with Heinz ended on April 9, 2013 due to attendance. He was eligible for additional work but did not check in with the employer for additional work until August 22, 2013. The claimant was considered to have voluntarily quit his employment.

The claimant filed a claim for unemployment insurance benefits effective June 23, 2013 and has received benefits after the separation from employment in the amount of $1,943.00.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1. The employer herein is a temporary employment agency and temporary employment agencies are governed by Iowa Code § 96.5-1-j, which places specific restrictions on both the employer and the employee with regard to qualification for unemployment insurance benefits after a voluntary separation.

To be disqualified from receiving benefits, at the time of hire the employer must advise the individual in writing of the three-day notification rule and the employer did so in this case. The employer must also notify the individual that he may be disqualified from receiving unemployment insurance benefits if he fails to notify the employer. Iowa Code § 96.5-1-j. The claimant signed and was given a copy of the employment policies and procedures which advised him that failure to contact the employer after the end of an assignment could result in a loss of unemployment benefits.

The claimant knew or should have known he was required to contact the employer after the completion of his assignment so the employer knew whether he was available for additional assignments. He did not contact the employer after the end of his assignment on April 9, 2013. The claimant did not satisfy the requirements of Iowa Code § 96.5-1-j and is disqualified from receiving unemployment insurance benefits as of June 29, 2013.

Because the claimant has been deemed ineligible for benefits, any benefits he has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met: 1) there was no fraud or willful misrepresentation by the claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer's failure to participate, that employer's account continues to be subject to charge for the overpaid amount. *See* Iowa Code § 96.3-7.

In the case herein, the benefits were not received due to fraud or willful misrepresentation and the employer witness did not personally participate in the fact-finding interview. A witness name and number was provided but the fact finder did not call the witness. However, prior to the fact finding, the employer representative sent in detailed written documentation which contained factual information regarding the reasons for the voluntary quit. In accordance with the Agency definition of participation, the employer participated in the fact-finding interview and its account is not subject to charge. *See* 871 IAC 24.10. Consequently, a waiver cannot be considered and the claimant is responsible for repaying the overpayment amount of $1,943.00.

DECISION:

The unemployment insurance decision dated September 27, 2013, reference 06, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of $1,943.00.

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Susan D. Ackerman
Administrative Law Judge

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Decision Dated and Mailed

sda/css