

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HANK SOUTH
Claimant

APPEAL NO. 09A-UI-17935-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

R J PERSONNEL INC
Employer

OC: 11/01/09
Claimant: Respondent (2-R)

Section 96.5(1)j – Temporary Employment

STATEMENT OF THE CASE:

Temp Associates filed an appeal from a representative's decision dated November 23, 2009, reference 01, which held that no disqualification would be imposed regarding Hank South's separation from employment. After due notice was issued, a hearing was held by telephone on January 11, 2010. The employer participated by Holly Jacobi, Account Manager; Kevin Jensen, Vice President; and Mariano Rodriguez, Account Manager. Mr. South responded to the notice of hearing and four attempts were made to contact him for the hearing. All four attempts received a recording that indicated the call could not be completed as dialed. Mr. South has not contacted the Appeals Bureau concerning his failure to participate in the hearing.

ISSUE:

At issue in this matter is whether Mr. South was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. South worked for Temp Associates, a temporary placement service, from November 11, 2008 until October 29, 2009. He was assigned to work full time for Muscatine Food Corporation. On July 8, 2009, he was placed on probation for one year as a result of sleeping on the job. He was discharged from the assignment because he was over two hours late for work on October 29 due to oversleeping. Muscatine Food Corporation notified him that the assignment was over and later notified Temp Associates of this fact.

On November 10, 2008, Mr. South signed an "Availability Statement" for Temp Associates. The document indicated he had to make contact with Temp Associates within three working days of the end of an assignment or he would be considered a voluntary quit. Temp Associates did not hear from Mr. South on October 29 or any date thereafter.

Mr. South filed a claim for job insurance benefits effective November 1, 2009. He has received a total of \$3,366.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

As an employee of a temporary placement firm, Mr. South was required to notify Temp Associates that he had completed his assignment within three working days of when the assignment ended. Iowa Code section 96.5(1)j. He had been notified of his requirement in writing at the time of hire. The notice is on a separate document that does not contain other terms and conditions of employment. It comports with the requirements of section 96.5(1)j. Since he did not make the required contact, Temp Associates was deprived of the opportunity to offer him additional work. Because Mr. South did not make the required contact, his separation of October 29, 2009 is considered a voluntary quit.

An individual who leaves employment voluntarily is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). The evidence of record does not establish any good cause attributable to the employer for Mr. South's quit. He did not participate in the hearing to explain why he stopped contacting Temp Associates about work. Inasmuch as his separation was not for any good cause attributable to the employer, he is not entitled to job insurance benefits.

Mr. South has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated November 23, 2009, reference 01, is hereby reversed. Mr. South quit his employment with Temp Associates for no good cause attributable to the employer. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. South will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs