

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEWIS C RODGERS

Claimant

APPEAL NO. 08A-UI-03435-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC

Employer

**OC: 12-30-07 R: 04
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Leaving
Section 96.3(7) - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 4, 2008, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on April 22, 2008. The claimant did not participate. The employer did participate through Sarah Fiedler, Administrative Assistant in the Human Resources Department. Employer's Exhibit One was received.

ISSUE:

Did the claimant voluntarily quit without good cause attributable to the employer?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: The claimant was last assigned to work at City Carton Recycling as a general laborer, beginning on December 26, 2007, through March 21, 2008, when he voluntarily quit to accept employment as an employee of City Carton Recycling.

The claimant was working on average 40 hours per week or had 40 hours of work available to him beginning on December 30, 2007. The claimant was not partially unemployed from December 2007 through March 21, 2008, as he had full-time work available to him. The claimant filed a claim for benefits for each week between January 5, 2008 and March 22, 2008, but did not report any wages earned for those weeks. Employer's Exhibit One makes clear that the claimant was working full time and earning full time wages between January 5, 2008 and March 22, 2008.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not partially unemployed for the twelve week period ending March 22, 2008.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Code section 96.19-38 provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

An individual shall be deemed partially unemployed in any week in which the individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Iowa Code section 96.7-2-a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an

individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

Because the claimant was employed his regular full-time hours, he is not considered partially unemployed. Because the employer was offering full-time hours to the claimant, the claimant was not partially unemployed. Benefits are denied.

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.

Because claimant was not partially unemployed, benefits were paid to which claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The April 4, 2008, reference 02, decision is reversed. The claimant was not partially unemployed. Benefits are denied. Claimant is overpaid benefits in the amount of \$1,998.56.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw