

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**JACOB M BAILEY**

Claimant

**QPS EMPLOYMENT GROUP INC**

Employer

**APPEAL NO. 16A-UI-07794-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/12/16**

**Claimant: Respondent (2)**

Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment

Iowa Code § 96.3-7 – Recovery of Overpayment of Benefits

871 IA Admin. Code 24(10) – Employer Participation in Fact Finding

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated July 6, 2016, reference 03, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 3, 2016. Claimant participated personally. Employer participated by Rhonda Hefter de Santisteban, and Tanya Chason. Employer's exhibit 1 was admitted into evidence

**ISSUE:**

Did the claimant quit by not reporting for an additional work assignment within three business days of the end of the last assignment?

Whether claimant was overpaid benefits?

If claimant was overpaid benefits, should claimant repay benefits or should employer be charged due to employer's participation or lack thereof in fact finding?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was last assigned at Silgan Containers from April 18, 2016, and was separated from the assignment, but not the employment, on June 3, 2016. Claimant did sign for and receive instruction from employer about what to do at the end of the assignment according to Iowa Code § 96.5(1)j. Said instruction indicated that claimant needed to inform employer of his desire for a new assignment at the end of a previous assignment.

Although claimant stated that he requested placement within three days of the ending of his previous assignment, claimant stated companies where he spoke with employer about employment opportunities and employer was able to state with specificity that those

conversations were not conducted on the dates claimant stated. Employer stated specific dates when employment opportunities were available and detailed that he did in fact speak with claimant weeks later about the possible job options. Said discussions did not occur within the three days of the ending of the previous assignment.

Claimant has received unemployment benefits in this matter in the amount of \$349.00 per week for seven weeks for a total receipt of \$2,443.00.

Employer did substantially participate in fact finding in this matter.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant's separation was not with good cause attributable to the employer.

Iowa Code § 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. (1) 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.

(2) 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.

(3) For the purposes of this paragraph:

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

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

Iowa Admin. Code r. 871-24.26(19) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

In this case, the employer had notice of the claimant's availability because it notified him of the end of the assignment but claimant did not request another assignment within three days of the ending of his previous assignment. Claimant was in contact with employer, but didn't request an assignment until weeks had passed since his previous placement. Claimant did sign for and receive instruction from employer about what to do at the end of the assignment according to Iowa Code § 96.5(1)j. Claimant's statements as to his requests for assignments were countered by employer's documentation as to the dates when claimant contacted employer, those companies with openings, and what was stated on each date. As claimant was confused as to dates and what was said during conversations on each date, employer's testimony is deemed to have been far more credible. Benefits are denied.

The overpayment issue was addressed. Claimant has been overpaid benefits in this matter in the amount of \$2,443.00.

**DECISION:**

The decision of the representative dated July 6, 2016, reference 03, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. It is further ordered that claimant has been overpaid benefits in this matter, and as employer did substantially participate in fact finding, employer's account shall not be charged for the overpayments.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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