

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

THOMAS E SMITH  
2900 COTTAGE GROVE APT 201  
DES MOINES IA 50311

WESTSTAFF USA INC.  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-01120-AT  
OC: 12/12/04 R: 02  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 – Recovery of Overpayments

STATEMENT OF THE CASE:

Weststaff USA, Inc. filed a timely appeal from an unemployment insurance decision dated January 19, 2005, reference 02, which allowed benefits to Thomas E. Smith. After due notice was issued, a telephone hearing was held on February 16, 2005 with Mr. Smith participating. Branch Manager Robert Fava and Placement Consultant Ryan LeRoque participated for the employer. Exhibit One was admitted into evidence.

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: Thomas E. Smith was employed by Weststaff USA, Inc. as a temporary worker. On May 14, 2004 he was working on assignment at Reese Associates. Mr. Smith was scheduled to work the following week but did not show up for work or contact his employer. He next contacted Weststaff USA, Inc. on September 10, 2004. Mr. Smith has received unemployment insurance benefits since filing a claim effective December 12, 2004.

REASONING AND CONCLUSIONS OF LAW:

The question is whether Mr. Smith's separation from employment was a disqualifying event. It was.

Iowa Code Section 96.5-1 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.

The claimant has the burden of proof. See Iowa Code section 96.6-2. The claimant testified that he could not remember if he worked after May 14, 2004 or why he stopped reporting to work. The employer's testimony and evidence was detailed and specific. It establishes that Mr. Smith abandoned his assignment by failing to return to work after May 14, 2004 although work was available. Benefits must be withheld.

The administrative law judge notes that he does not analyze this case under Iowa Code section 96.5-1-j. This is because that section of the law deals with an individual's responsibility to contact the temporary employment service after the end of an assignment. The evidence here establishes that Mr. Smith abandoned his work in mid-assignment.

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.

Mr. Smith has received unemployment insurance benefits to which he is not entitled. They must be recovered in accordance with the provisions of law.

DECISION:

The unemployment insurance decision dated January 19, 2005, reference 02, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. He has been overpaid by \$402.00.

kjf/kjf