

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBIN N FULLER
Claimant

APPEAL NO. 11A-UI-04948-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES - MARSHALLTOWN
Employer

OC: 12/26/10
Claimant: Respondent (2-R)

Section 96.5(1)j – Quit/Temporary

STATEMENT OF THE CASE:

The employer, Temp Associates, filed an appeal from a decision dated April 7, 2011, reference 03. The decision allowed benefits to the claimant, Robin Fuller. After due notice was issued a hearing was held by telephone conference call on May 12, 2011. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Manager Nancy Mullaney. Exhibit One was admitted into the record.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Patrick Howard was employed by Temp Associates from August 2, 2009 until January 6, 2010. His only assignment was at Montezuma Manufacturing. That client was on a holiday shut down after December 23, 2009. On December 29, 2009, Manager Nancy Mullaney contacted the claimant directly and said the assignment was ended and he was to call the office no later than January 5, 2010, to “check in” and apply for more work.

The claimant had signed an availability statement at the beginning of his employment which notified him he must contact the temporary agency within three days of the end of each assignment to indicate he was available and request more work. The employer did not hear from him by January 6, 2010, and he was considered a voluntary quit because he had not contacted the employer within three days of the end of the assignment to request more work.

Robin Fuller has received unemployment benefits since filing a claim with an effective date of December 26, 2010.

REASONING AND CONCLUSIONS OF LAW:

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. 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.

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.

For the purposes of this paragraph:

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

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

The claimant was advised, both in writing and verbally by the employer, he must contact the office no later than January 5, 2010, to request more work. He failed to do so. Under the provisions of the above Administrative Code section, this is a voluntary quit without good cause attributable to the employer and the claimant is disqualified.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of April 7, 2011, reference 03, is reversed. Robin Fuller is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs