

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

JOHN B BAHATI
4419 - 1ST AVE SW APT 208
CEDAR RAPIDS IA 52405-4278

ALL HEART STAFFING INC
4403 - 1ST AVE SE STE 310
CEDAR RAPIDS IA 52402-3200

Appeal Number: 06A-UI-04534-RT
OC: 03/26/06 R: 03
Claimant: Respondent (1)

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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting
Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, All Heart Staffing, Inc., filed a timely appeal from an unemployment insurance decision dated April 21, 2006, reference 01, allowing unemployment insurance benefits to the claimant, John B. Bahati. After due notice was issued, a telephone hearing was held on May 11, 2006, with the claimant participating. Joel Katcher, Administrator and Owner, participated in the hearing for the employer. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. At 2:00 p.m. the claimant had not called in a telephone number where he could be reached for the hearing. The administrative law judge reached the employer and began the hearing when

the record was open at 2:02 p.m. The claimant called at 2:10 p.m. He indicated that he had received the notice for the hearing but had not called in a telephone number because he did not pay any attention to the notice of appeal that provided that he immediately call in a telephone number upon receipt of the notice. Because the hearing had not been completed, the claimant was allowed to participate in the hearing and he did so for the rest of the hearing.

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: The claimant was employed by the employer since November 8, 2004 until he separated from his employment on March 24, 2006. The employer is a temporary staffing service providing appropriate staff to nursing homes and other care facilities, primarily to nursing homes. The claimant had been assigned to a number of nursing homes. The most recent assignment was on March 22, 2006 for a one-day assignment to Highland Ridge, an assisted living facility. The claimant satisfactorily completed that assignment. On March 24, 2006, the claimant brought in his timecards for that assignment and two assignments the previous week, one for Village Ridge and one for Solon Nursing Center. At that time the administrator and owner, Joel Katcher, the employer's witness, informed the claimant that he was not going to be permitted to work at a number of facilities because they did not want the claimant back. Mr. Katcher did not know why these facilities did not want the claimant nor did he give the claimant any such reasons. The balance of the conversation between the claimant and Mr. Katcher is uncertain. Nevertheless, the claimant was told on that occasion that there were no present positions for the claimant and the claimant left the employer's office believing that there would be no assignments for him in the future. When the claimant was first hired he was told that he would call the employer and that the employer would also call him for assignments. At that time the claimant signed a separate document indicating that the claimant must contact the employer within three working days of the completion of an assignment and seek reassignment or he would be considered to have voluntarily quit. Pursuant to his claim for unemployment insurance benefits filed effective March 26, 2006, the claimant has received unemployment insurance benefits in the amount of \$1,610.00 as follows: \$235.00 for the benefit week ending April 1, 2006 (earnings \$90.00); \$260.00 for the benefit week ending April 8, 2006 (earnings \$50.00); \$75.00 for the benefit week ending April 15, 2006 (earnings \$250.00); and \$260.00 per week for four weeks from the benefit week ending April 22, 2006 to the benefit week ending May 13, 2006.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was not.
2. Whether the claimant is overpaid unemployment insurance benefits. He is not.

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.

Iowa Code section 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.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The first issue to be resolved is the character of the separation. The employer maintains that the claimant voluntarily quit on March 24, 2006 when he reported back to the employer after completion of an assignment on March 22, 2006 and informed the employer that he did not want to work for nursing homes anymore and then the claimant never notified the employer. The claimant denies telling the employer that he did not want to work for nursing homes and maintains that he is still employed by the employer although he has not been given any assignments. Neither witness was particularly credible. The administrative law judge concludes that there is not a preponderance of the evidence that the claimant left his employment voluntarily. The employer's witness, Joel Katcher, Administrator and Owner, testified that on March 24, 2006, the claimant told him that he did not want to work for the nursing homes anymore. This statement occurred after Mr. Katcher had informed the claimant that a number of nursing homes did not want the claimant back. The claimant denies such a conversation and denies that he no longer wanted to work for nursing homes but does agree that he was informed by Mr. Katcher that there were a number of nursing homes that did not want to continue to use the claimant. The administrative law judge concludes that there is not a preponderance of the evidence that the claimant made such statements to Mr. Katcher on March 24, 2006 so as to establish a voluntary quit.

Both parties agree that the claimant, when he was first hired, signed a separate document indicating that he must notify the employer, a temporary employment agency or firm, within three working days after the completion of his last assignment and seek reassignment or he would be considered a voluntary quit. Mr. Katcher seems to argue that the claimant did not comply with this requirement. The administrative law judge disagrees. The evidence establishes that the claimant's last assignment was on March 22, 2006, a one-day assignment to Highland Ridge, an assisted living facility, and that the claimant satisfactorily completed that assignment. It is uncontested that the claimant came in a couple days thereafter on March 24, 2006 with his timecards for that assignment and two other assignments the prior week. It is

also uncontested that the claimant was told by Mr. Katcher that a number of facilities no longer wanted the claimant to be assigned there. This indicates to the administrative law judge that the claimant did, in some way, seek reassignment at that time. The administrative law judge notes that this was only two working days after the completion of the claimant's last assignment. Accordingly, the administrative law judge concludes that the claimant complied with the requirement that he notify the employer within three working days of the completion of an assignment and seek reassignment.

The administrative law judge further concludes that there were no other assignments available to the claimant, at least on March 24, 2006. When the administrative law judge asked Mr. Katcher if there were other assignments available he was equivocal. The claimant testified that there were no such assignments available. The administrative law judge concludes that there were no assignments available for the claimant on March 24, 2006. The administrative law judge specifically notes that many assignments from the employer are day-by-day assignments but nevertheless on March 24, 2006 there were no further assignments for the claimant. Accordingly, the administrative law judge concludes that the claimant cannot be deemed to have voluntarily left his employment for a failure to notify the employer of the completion of his last assignment. The evidence also establishes that each party agreed to contact the other party for assignments. The administrative law judge is constrained to conclude that the claimant's failure to contact the employer after March 24, 2006, does not establish a voluntary quit as the evidence does establish that at least on some occasions the employer contacted the claimant. Further, the administrative law judge concludes that the claimant was justified in believing that there were no assignments for him since he had been told by Mr. Katcher that many institutions did not want the claimant to work for them. Accordingly, the administrative law judge concludes that the claimant did not voluntarily leave his employment but was either discharged or laid off for a lack of work on March 24, 2006.

If the claimant were laid off for a lack of work, the claimant would not be disqualified to receive unemployment insurance benefits. The administrative law judge concludes that there is not a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. Mr. Katcher testified that he did not know why the institutions did not want the claimant to work for them nor did he inform the claimant of that. There is no evidence in the record of any willful or deliberate behavior on the part of the claimant or any carelessness or negligence on the part of the claimant in such a degree of recurrence as to establish disqualifying misconduct. Accordingly, the administrative law judge concludes that the claimant was either laid off for a lack of work or was discharged but not for disqualifying misconduct, and, in any case, the claimant would not be disqualified to receive unemployment insurance benefits. Mr. Katcher testified that the claimant said that he had another job with DES, but the claimant testified that he merely told Mr. Katcher that he had applied for work there. The administrative law judge concludes that the claimant did not have a regular full-time job with DES and any statements in regards to that would not affect the result herein. Unemployment insurance benefits are allowed to the claimant, provided he is otherwise eligible.

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.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$1,610.00 since separating from the employer herein on or about March 24, 2006 and filing for such benefits effective March 26, 2006. The administrative law judge further concludes that the claimant is entitled to these benefits and is not overpaid such benefits.

DECISION:

The representative's decision of April 21, 2006, reference 01, is affirmed. The claimant, John B. Bahati, is entitled to receive unemployment insurance benefits, provided he is otherwise eligible, because he was laid off for a lack of work or discharged but not for disqualifying misconduct. As a result of this decision, the claimant is not overpaid any unemployment insurance benefits arising out of his separation from the employer herein.

cs/pjs