

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TORRES-AGUIRRE, JORGE
Claimant

APPEAL NO. 12A-UI-15174-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

OC: 12/02/12
Claimant: Respondent (2-R)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 24, 2012, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on January 29, 2013. Claimant Jorge Torres-Aguirre did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Sarah Fiedler, Claims Administrator, represented the employer.

ISSUE:

Whether Mr. Torres-Aguirre separated from the employment for a reason that disqualifies him for unemployment insurance benefits. The administrative law judge concludes that Mr. Torres-Aguirre voluntarily quit without good cause attributable to the employer and is therefore disqualified for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Team Staffing Solutions, Inc., is a temporary employment agency. Jorge Torres-Aguirre performed work for the employer in one full-time, long-term assignment at RockTenn in Iowa City. Mr. Torres-Aguirre started the assignment in March 2012 and last appeared and performed work in the assignment on December 4, 2012. Mr. Torres-Aguirre did not appear for work on December 5, 2012. When a team staffing representative contacted Mr. Torres-Aguirre to ask why he had not reported for work, Mr. Torres-Aguirre said he did not like the work and did not want to work there anymore. The Team Staffing representative asked whether Mr. Torres-Aguirre was interested in additional work through Team Staffing and Mr. Torres-Aguirre said he was not interested. There was no further contact between the parties.

REASONING AND CONCLUSIONS OF LAW:

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

The evidence in the record indicates that Mr. Torres-Aguirre voluntarily quit for personal reasons and not for good cause attributable to the employer. Mr. Torres-Aguirre is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Torres-Aguirre.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of the amount of the overpayment and whether the claimant will have to repay the overpaid benefits.

DECISION:

The Agency representative's December 24, 2012, reference 01, decision is reversed. The claimant voluntarily quit the employment on December 5, 2012 without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

This matter is remanded to the Claims Division for determination of the amount of the overpayment and whether the claimant will have to repay the overpaid benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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