

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

JAMIE L WINTERBOTTOM
668 HILLCREST RD
MILAN IL 61264

TEMPRO SERVICES INC
612 VALLEY VIEW
MOLINE IL 61265

AMENDED

Appeal Number: 05A-UI-03412-BT
OC: 01/30/05 R: 04
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, 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 Quit
Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Tempo Services, Inc. (employer) appealed an unemployment insurance decision dated March 28, 2005, reference 03, which held that Jamie Winterbottom (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 18, 2005. The claimant participated in the hearing. The employer participated through Colleen McGuinty, Unemployment Benefits Administrator and Kathy Sattizahn, Account Coordinator.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time clerical employee from May 5, 2004 and was actively working through the date of September 5, 2004. Subsequent to that date, the employer and the claimant frequently spoke about other positions but they did not work out for the claimant for one reason or another. The claimant is going to school and the employer had difficulty trying to find a job that would work within the claimant's school schedule. On December 22, 2004, the employer offered the claimant a part-time position with Jackson Hewitt, who was willing to be flexible with the work hours. The claimant accepted the position and signed up for one of the training classes that were scheduled to begin on January 3, 2005. She failed to attend the training class but the employer was unaware of that fact.

The actual position was scheduled to start on January 18, 2005 and it was not until January 20, 2005, that the employer found out the claimant was a no-call/no-show. The employer contacted the claimant and advised her she needed to sign a written warning for a no-call/no-show before she would be given additional assignments. The employer documented the claimant response as she was not looking for a job at that time because she was going to get a foster child and would be getting money from the state and she is also getting unemployment. The employer further documented that the claimant said she would sign the warning when she was "ready to start looking for a job again." The employer noted that the claimant had voluntarily quit her employment.

The claimant filed a claim for unemployment insurance benefits effective January 30, 2005 and has received benefits after the separation from employment in the amount of \$3,908.00.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer or if the employer discharged her for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980); Peck v. Employment Appeal Bd., 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit and acted to carry it out when she advised the employer she was no longer looking for a job on January 20, 2005, after she had accepted a job with Jackson Hewitt.

The claimant denies accepting the position with Jackson Hewitt and denies telling the employer that she was not going to work because she was going to get a foster child. The Administrative Law Judge finds the evidence provided by the employer to be more persuasive. It seems unlikely that an employer would document such a detailed excuse as to why the claimant was not working if no information like that was provided. It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. The claimant has not satisfied that burden. Benefits are denied.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated March 28, 2005, reference 03, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$3,908.00.

sdb/pjs