

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES S MANGANELLO
Claimant

APPEAL NO. 11A-UI-10966-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

OC: 07/03/11
Claimant: Respondent (2-R)

Section 96.5(1) – Voluntary Quit
Section 96.4(3) – Able & Available
Section 96.3(7) – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 10, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 12, 2011. Claimant James Manganello participated. Sarah Fiedler, claims administrator, represented the employer. Exhibits Two, Three, and Four were received into evidence. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant.

ISSUE:

Whether Mr. Manganello separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

Whether Mr. Manganello has been able to work and available for work since he established a claim for benefits that was effective July 3, 2011.

Whether the claimant has been overpaid benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency. James Manganello commenced his employment with Team Staffing Solutions on January 7, 2011 and was placed in a full-time, temporary work assignment at Roquette in Keokuk on January 10, 2011. Mr. Manganello last performed work in the assignment on July 4, 2011. On that day, Mr. Manganello left work early with approval after receiving word that his father had been in a motorcycle accident. Mr. Manganello traveled to Quincy, Illinois, to be with his father, who was hospitalized. Mr. Manganello was scheduled to work on July 5 and 6, but properly notified Terri Helm, on-site representative, that he would be absent due to the family emergency. On July 9, Ms. Helm sent an e-mail message to the Team Staffing office regarding time sheet documentation she had received from Roquette that indicated Roquette had ended Mr. Manganello's assignment and replaced him with another worker. Ms. Helm attempted to contact Mr. Manganello, but his telephone had been disconnected. Shortly thereafter, Team Staffing representative Greg Goss reported to the Team Staffing office that he had received a text message from Mr. Manganello

indicating that he was quitting the employment. Mr. Manganello did not make further contact with Team Staffing.

On January 7, 2011, Mr. Manganello signed the Team Staffing Solutions Notification Requirement, Availability for Work Assignments. The document notified Mr. Manganello of his obligation to contact Team Staffing within three working days of the end of an assignment to request placement in a new assignment. The policy appeared on a document by itself. Mr. Manganello received a copy of the document he signed.

Mr. Manganello established a claim for unemployment insurance benefits that was effective July 3, 2011 and received benefits. Mr. Manganello sought new full-time employment until he started school in August 2011.

Mr. Manganello is a single parent to a nine-year-old son. Until July 21, 2011, Mr. Manganello had a girlfriend who supervised the son while Mr. Manganello was at work. Effective July 21, Mr. Manganello no longer had anyone to assist with caring for his son.

On August 17, 2011, Mr. Manganello became a full-time college student. Mr. Manganello attends school until 12:45 p.m. on Monday, Wednesday, and Friday, and until 1:20 p.m on Tuesday and Thursday. Mr. Manganello takes an additional online course in the evenings. After he started school, Mr. Manganello was no longer available for full-time work and was interested only in a part-time position.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.26(19) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

The weight of the evidence establishes that Mr. Manganello was discharged from the assignment due to attendance on or immediately before July 9, 2011. The client business ended the assignment. At the time, Mr. Manganello was absent due to a family emergency that he had reported to the Team Staffing on-site representative. The discharge from the assignment would not disqualify Mr. Manganello for unemployment insurance benefits. When the employer attempted to contact Mr. Manganello about the assignment being ended, the employer discovered that the phone number the employer had for Mr. Manganello had been disconnected. *Before* the employer was able to notify Mr. Manganello that the assignment was ended, Mr. Manganello notified the employer that he would not be returning.

The employer had an end-of-assignment notice requirement that complied with the statute. The employer provided Mr. Manganello with a copy of the document after he signed it. The policy, and the statute, obligated Mr. Manganello to contact Team Staffing within three working days of the end of an assignment to request placement in a new assignment. Mr. Manganello's notice to Team Staffing, *before* he was notified that the assignment had ended, that he would not be returning, indicated that Mr. Manganello did not intend to make himself available for further work at Roquette or for further assignment with Team Staffing. In other words, it indicated a voluntary quit.

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 evidence establishes that Mr. Manganello voluntarily separated from the employment relationship with Team Staffing Solution for personal reasons and not for good cause attributable to the temporary employment agency. Accordingly, Mr. Manganello 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 will not be charged. Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The weight of the evidence indicates that Mr. Manganello was available for full-time employment through the benefit week that ended July 23, 2011, but was not available for full-time work thereafter. It was on Thursday, July 21, that Mr. Manganello lost child care for his son. Thereafter Mr. Manganello started school on August 17 and this made Mr. Manganello further unavailable for full-time employment. Mr. Manganello's unavailability for full-time work made him additionally ineligible for benefits effective July 24, 2011. The availability disqualification continued as of the appeal hearing on September 12, 2011.

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.

Because Mr. Manganello did not meet the availability requirement from July 24, 2011 onward, the benefits disbursed to him for the period of July 24, 2011 through September 17, 2011 constitute an overpayment of benefits that Mr. Manganello must repay. Mr. Manganello is overpaid \$3,200.00 for the period of July 24, 2011 through September 17, 2011 and must repay that amount.

The overpayment recovery law was updated in 2008 as it relates to *separations* from employment. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an

overpayment of benefits, *in connection with a separation from employment*, 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. The administrative law judge has already determined that the claimant must repay the \$3,200.00 in benefits he received for the period of July 24, 2011 through September 17, 2011. This was based on the conclusion that the claimant did not meet the availability requirements during that period. The revision of the overpayment recovery statute did not involve a revision with regard to overpayment of benefits based on a claimant not being *available* for work. The administrative law judge will remand the matter to the Claims Division for determination of whether Mr. Manganello is required to repay additional benefits based on the disqualifying separation from the employment.

DECISION:

The Agency representative's August 10, 2011, reference 01, decision is reversed. The claimant voluntarily separated from the temporary employment agency 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 will not be charged.

The claimant has not met the availability requirement since the benefit week that started July 24, 2011 and is, additionally, ineligible for benefits for this reason. The claimant was overpaid \$3,200.00 in benefits for the period of July 24, 2011 through September 17, 2011, when he did not meet the availability requirements. The claimant must repay that amount.

The administrative law judge remands the matter to the Claims Division for determination of whether the claimant is required to repay additional benefits based on the disqualifying separation from the employment.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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