

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAIL G YEAGER
Claimant

L A LEASING INC
SEDONA STAFFING
Employer

APPEAL NO. 12A-UI-12269-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/10/12
Claimant: Respondent (2R)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Sedona Staffing filed a timely appeal from a representative's decision dated July 13, 2012, reference 01, which held the claimant eligible to receive benefits. After due notice was provided, a telephone hearing was held on November 5, 2012. The claimant did not participate. The employer participated by Ms. Colleen McGuinty, Unemployment Insurance Administrator.

ISSUE:

The issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Michail Yeager began employment with Sedona Staffing on April 26, 2010. The claimant was last assigned to work at Wilton Precision Steel on May 9, 2012. The claimant was assigned to work as a general laborer and was being paid by the hour. Mr. Yeager last reported for that assignment on May 12, 2012. On May 13 he called in absent. The claimant did not call or report his impending absences on May 14, May 15 or May 17, 2012 and was separated from the assignment due to job abandonment.

At the time of hire employees are informed of their responsibility to contact both Sedona Staffing the client each day to report their impending absences. Employees are aware that failure to report or provide notification for three consecutive work shifts is considered to be a voluntary quit by the employer.

Mr. Yeager later contacted Sedona Staffing on May 19, 2012. At that time he indicated that he had not been reporting due to a sick child and lack of transportation. The claimant provided no explanation for failing to report his impending absences as required by policy.

REASONING AND CONCLUSIONS OF LAW:

For the reason that follow the administrative law judge concludes the claimant voluntarily left employment without good cause attributable to the employer.

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.

871 IAC 24.25(4) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

An employer is entitled to expect its employees to report for work as scheduled or to be notified when and why the employee is unable to report to work. Inasmuch as the claimant failed to report for work or notify the employer for three consecutive workdays in violation of the employer's policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer. Benefits are withheld.

Iowa Code section 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.

DECISION:

The representative's decision dated July 13, 2012, reference 01, is reversed. The claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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