

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHAD L DRUMBARGER
Claimant

APPEAL NO. 14A-UI-05884-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING INC
Employer

OC: 07/21/13
Claimant: Respondent (2)

Iowa Code Section 96.5(1)(j) – Separation From Temporary Employment

Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 30, 2014, reference 01, decision that allowed benefits to the claimant and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant's February 2014 separation was for good cause attributable to the temporary employment firm. After due notice was issued, a hearing was held on July 16, 2014. Claimant Chad Drumbarger participated. Colleen McGuinty represented the employer and presented additional testimony through Kathy Hutchinson. Exhibit One was received into evidence. The administrative law judge took official notice of the Agency's administrative record (DBRO) of benefits disbursed to the claimant. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview.

ISSUES:

Whether the claimant's separation from the temporary employment agency was for good cause attributable to the employer.

Whether the claimant was overpaid benefits.

Whether the claimant must repay benefits.

Whether the employer's account may be charged for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: L A Leasing is a temporary employment agency. Chad Drumbarger last performed work for the employer in a full-time, temporary work assignment at Orbis in Monticello. Mr. Drumbarger last performed work in the assignment on February 7, 2014 and completed the assignment on that day. On February 7, 2014 Kathy Hutchinson, Area Manager for L A Leasing, notified Mr. Drumbarger that the assignment had ended. Mr. Drumbarger did not request additional work from L A Leasing in connection with that call. Mr. Drumbarger did not make additional contact with the employer thereafter.

In October 2013 the employer had Mr. Drumbarger sign an Availability Statement that obligated him to contact the employer within three days of the completion of an assignment to request placement in a new assignment. The clear and concise policy statement warned Mr. Drumbarger that if he failed to make the required contact, the employer would deem him to have voluntarily quit the employment and the separation could affect his eligibility for benefits. The employer provided Mr. Drumbarger with a copy of the document he signed.

Mr. Drumbarger established an additional claim for benefits that was effective May 4, 2014 and received benefits in connection with the claim. Mr. Drumbarger received \$2,610.00 for the ten-week period of May 4, 2014 through July 12, 2014.

A fact-finding interview was set for May 29, 2014. The employer's participation in the fact-finding interview was limited to submission of documents. The employer did not have anyone with personal knowledge of the claimant's employment or separation standing by to provide rebuttal. The employer had instead submitted a boilerplate document indicating that one of two unemployment insurance representatives would be available for rebuttal. The documentation submitted by the employer included a separation form that indicated the claimant had voluntarily quit by not checking in for work in violation of the employer's three-day policy. The documentation provided the start date for the assignment and the end date of the assignment. The employer included a copy of the Availability Statement the claimant had signed. The employer provided no documentation from persons with personal knowledge of the claimant's employment or separation from the employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 Admin. Code r. 871-24.26(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 evidence indicates that Mr. Drumbarger completed the assignment at Orbis on February 7, 2014. The evidence fails to indicate misconduct in connection with the involuntary separation from the temporary work assignment. The employer's Availability Statement complies with the requirement of the statute. Accordingly, Mr. Drumbarger was obligated to contact the employer within three days of completing the assignment to request placement in a new assignment. Mr. Drumbarger did not do that. Under the statute, Mr. Drumbarger's failure to make the required contact after completing the assignment constituted a voluntary quit without good cause attributable to the employer. Effective February 7, 2014 Mr. Drumbarger is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Drumbarger must also meet all other eligibility requirements.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

Iowa Administrative Code rule 817 IAC24.10(1) defines employer participation in fact-finding interviews as follows:

Employer and employer representative participation in fact-finding interviews.
24.10(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid \$2,610.00 in benefits for the ten-week period of May 4, 2014 through July 12, 2014. The weight of the evidence indicates that the employer did not participate in the fact-finding interview within the meaning of the law. The employer's cursory documentation was insufficient to constitute participation. The employer's boilerplate indication that an unemployment insurance representative could provide rebuttal information did not constitute having a person with personal knowledge available to provide rebuttal information. Because the claimant did not receive benefits due to fraud or willful misrepresentation and because the employer failed to participate in the fact-finding interview, the claimant is not required to repay the overpayment and the employer remains subject to charge for the overpaid benefits. The employer's account is relieved of charges for benefits paid for the period beginning July 13, 2014.

DECISION:

The claims deputy's May 30, 2014, reference 01, decision is reversed. The claimant's February 7, 2014 separation from the temporary employment agency was without for good cause attributable to the temporary employment agency. 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 and must also meet all other eligibility requirements. The claimant is overpaid \$2,610.00 for the ten-week period of May 4, 2014 through July 12, 2014. The claimant is not required to repay the overpayment and the employer remains subject to charge for the overpaid benefits. The employer's account is relieved of charges for benefits paid for the period beginning July 13, 2014.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/can