

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

SUSAN P HART
3533 DEER RIDGE CT
BETTENDORF IA 52722

ARH INC
D/B/A EMPLOYMENT SOURCE
1815 GRANT ST
BETTENDORF IA 52722

Appeal Number: 04A-UI-10632-RT
OC: 09-12-04 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 Quitting
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, ARH, Inc., doing business as Employment Source, filed a timely appeal from an unemployment insurance decision dated September 27, 2004, reference 03, allowing unemployment insurance benefits to the claimant, Susan P. Hart. After due notice was issued, a telephone hearing was held on October 21, 2004 with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where she or any of his witnesses could be reached for the hearing, as instructed in the notice of appeal. The administrative law judge had no telephone number for the employer and, therefore, did not immediately call the employer at 1:00 p.m. The employer called the

administrative law judge at 1:10 p.m. and participated in the hearing. Jennifer Howay, Office Manager, participated in the hearing for the employer. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. Employer's Exhibit 1 was admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, including Employer's Exhibit 1, the administrative law judge finds: The employer is a temporary employment agency. The claimant began employment with the employer on July 29, 2004 when she was assigned to Mutual Med. The claimant completed that assignment when it ended on August 27, 2004 and she was informed of that by the employer. However, the claimant did not seek reassignment at that time nor has she done so since. The employer attempted to call the claimant, leaving telephone messages for her and even wrote her a letter, but received no response from the claimant. The employer has never heard from the claimant. The employer had other work available for the claimant. The claimant was informed in writing as shown at Employer's Exhibit 1 that if her assignment ends, she must contact the employer within three business days to make her availability known or the employer will inactivate the claimant's file as a voluntary quit. The claimant received a copy of this policy and signed an acknowledgement also as shown at Employer's Exhibit 1 and further agreed to contact the employer once a week regarding her availability. A failure to do so would also be considered a voluntary quit. Pursuant to her claim for unemployment insurance benefits filed effective September 12, 2004, the claimant has received no unemployment insurance benefits. She filed for only one week, benefit week ending September 18, 2004 and received no benefits. Iowa Workforce Development records indicate that the claimant is presently disqualified to receive unemployment insurance benefits as the result of a disqualifying separation from a prior employer, Family Resources, Inc., which separation occurred on or about July 21, 2004 and is disqualified by decision dated October 11, 2004, at reference 02. The claimant only earned from the employer herein \$1,584.00, which is insufficient to requalify the claimant to receive unemployment insurance benefits after this disqualifying separation. In order to requalify to receive unemployment insurance benefits, the claimant must earn ten times her weekly benefit amount of \$201.00 or \$2,010.00. Unless the claimant had earnings from some other source following her disqualifying separation from Family Resources, Inc., she has not requalified.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. She is not because she has received no such benefits.

871 IAC 24.23(11) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(11) Failure to report as directed to workforce development in response to the notice which was mailed to the claimant will result in the claimant being deemed not to meet the availability requirements.

The employer is a temporary employment firm. The administrative law judge concludes that the claimant failed to notify the temporary employment firm of the completion of her assignment and seek reassignment within three working days although she was advised in writing of the duty to do so. The claimant did not participate in the hearing to provide any reasons why she did not do so. Employer's Exhibit 1 indicates that the claimant was properly advised in writing of the notification requirement and signed a document to that effect. Accordingly, the administrative law judge concludes that the claimant is deemed to have voluntarily quit her employment on August 27, 2004. The issue then becomes whether the claimant left her employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that she has left her employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. The claimant did not participate in the hearing and provide any evidence of reasons attributable to the employer for her quit. There is no evidence that the claimant's working conditions either for the employer or for the assignee, Mutual Med, were unsafe, unlawful, intolerable or detrimental or that she was subjected to a substantial change in her contract of hire. The claimant simply completed her assignment and then never reported back to the employer seeking reassignment. Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily without good cause attributable to the employer, and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

The administrative law judge notes that the claimant is also disqualified to receive unemployment insurance benefits because of a disqualifying separation on July 21, 2004 from a prior employer, Family Resources, Inc., by decision dated October 11, 2004, reference 02. The claimant does not appear to have requalified to receive unemployment insurance benefits since that disqualifying separation since she only earned \$1,584.00 from the employer herein which is not ten times her weekly benefit amount of \$201.00 or \$2,010.00.

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.

The administrative law judge concludes that the claimant has received no unemployment insurance benefits since separating from her employer herein on or about July 27, 2004 and

filing for such benefits effective September 12, 2004. Since she has received no unemployment insurance benefits, she is not overpaid any such benefits.

DECISION:

The representative's decision of September 27, 2004, reference 03, is reversed. The claimant, Susan P. Hart, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits, because she left her employment voluntarily without good cause attributable to the employer. Since the claimant has received no unemployment insurance benefits, she is not overpaid any such benefits.

tjc/kjf