

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

MARISSA M JOHNSON
Claimant

APPEAL NO. 18A-UI-08432-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QPS EMPLOYMENT GROUP INC
Employer

OC: 07/08/18
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 1, 2018, reference 03, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be assessed for benefits, based on the Benefits Bureau deputy's conclusion that the claimant separated from the temporary employment firm on February 23, 2018 for good cause attributable to the employer. After due notice was issued, a hearing was held on August 29, 2018. Claimant Marissa Johnson did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Mai Lor represented the employer and presented additional testimony through Kayla Hase. Exhibit 1 was received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant (DBRO). The administrative law judge took official notice of the documents submitted for and generated in connection with the July 31, 2018 fact-finding interview for the limited purpose of determining whether the employer participated in the fact-finding interview.

ISSUES:

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

Whether Ms. Johnson has been overpaid unemployment insurance benefits.

Whether Ms. Johnson must repay overpaid benefits.

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: QPS Employment Group, Inc. is a temporary employment agency. Claimant Marissa Johnson commenced her employment relationship with QPS in August 2017. At that time, Ms. Johnson signed and received a copy of the employer's 3-Day Reassignment Policy, which stated as follows:

Once you complete an assignment with a client, it is your duty to contact QPS for reassignment within three (3) working days as required by Iowa Code Section 96.5-1-j. Failure to report within three (3) days for reassignment or to accept a new job assignment offered without reasonable cause will indicate that you have refused available work and quit working for QPS Employment Group. Furthermore, failure to seek reassignment may result in disqualification for unemployment benefits.

Ms. Johnson most recently performed work for QPS in a full-time, temp-to-hire assignment at Carrie's Ingredients. Ms. Johnson began the assignment on January 24, 2018 and last performed work in the assignment on February 23, 2018. At that point, the client business requested that Ms. Johnson be removed from the assignment. QPS does not know why the client asked for Ms. Johnson's removal from the assignment. On February 24, 2018, a QPS representative telephoned Ms. Johnson's last-known telephone number and left a message to notify Ms. Johnson that she should not return to the assignment at Carrie's Ingredients. Ms. Johnson did not make further contact with QPS until June 2018.

Ms. Johnson established an original claim for unemployment insurance benefits that was effective July 8, 2018. Iowa Workforce Development set Ms. Johnson's weekly benefit amount at \$386.00. Ms. Johnson received \$2,593.00 in benefits for the seven-week period of July 8, 2018 through August 25, 2018. QPS is a base period employer in connection with the claim.

On July 31, 2018, an Iowa Workforce Development Benefits Bureau deputy held a fact-finding interview that addressed Ms. Johnson's February 2018 separation from QPS. QPS Unemployment Specialist Jennifer Yang represented the employer at the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)j provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. (1) 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.

(2) 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.

(3) For the purposes of this paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(b) "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 in the record establishes that Ms. Johnson completed a full-time, temp-to-hire work assignment effective February 24, 2018, when the client business elected not to have her continue in the assignment. On that same day, the employer, QPS, notified Ms. Johnson that the assignment was completed. The employer's 3-Day Reassignment Policy, which the employer had Ms. Johnson sign and which the employer provided to Ms. Johnson at the start of the employment, complied with the notice requirements set forth at Iowa Code Section 96.5(1)(j). Accordingly, Ms. Johnson was obligated to contact the employer within three working days of completion of the assignment to request a new assignment. Ms. Johnson did not do that and did not make further contact with the employer until months later. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Johnson's February 24, 2018 separation from the temporary employment agency was without good cause attributable to the temporary employment agency. Accordingly, Ms. Johnson is disqualified for benefits until she has worked in and been paid wages equal to ten times her weekly benefit amount subsequent to the employment separation. Ms. Johnson must meet all other eligibility requirements.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible 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 base period employer failed to participate in the initial proceeding, the base period employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

Ms. Johnson received \$2,593.00 in benefits for the seven-week period of July 8, 2018 through August 25, 2018, but this decision disqualifies her for benefits. Accordingly, the benefits Ms. Johnson received constitute an overpayment of benefits. Because the employer participated in the fact-finding interview, Ms. Johnson is required to repay the overpaid benefits. The employer's account will be relieved of charges, including charges for benefits already paid to Ms. Johnson in connection with the claim.

DECISION:

The August 1, 2018, reference 03, decision is reversed. The claimant's February 2018 separation from the temporary employment agency was without good cause attributable to the employer. The separation was effective February 24, 2018. The claimant is disqualified for benefits until she has worked in and been paid wages equal to ten times her weekly benefit amount subsequent to the employment separation. The claimant must meet all other eligibility requirements. The claimant is overpaid \$2,593.00 in benefits for the seven-week period of July 8, 2018 through August 25, 2018. The claimant must repay the overpaid benefits. The employer's account shall be relieved of charges, including charges for benefits already paid in connection with the claim.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs