

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MEDALIS N DUBINOVIC
Claimant

APPEAL NO. 08A-UI-06393-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ANNA ENTERPRISES
STAFFING SOLUTIONS**
Employer

OC: 06/15/08 R: 02
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 9, 2008, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on July 29, 2008. The claimant did not provide a telephone number where he could be reached and, therefore, did not participate in the hearing. The employer participated through Anitra Horn, Temporary Coordinator.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on March 7, 2008, as a full-time temporary maintenance person assigned to work at Ryder Truck Rental. It was a temporary to hire position. The claimant did not appear for work after May 11, 2008. Continued work was available had the claimant continued to appear for work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work 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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by his actions. He stopped appearing for work. The claimant did not appear for the hearing and no reason was offered for the separation. The claimant voluntarily quit work without good cause attributable to the employer. Benefits are denied.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The July 9, 2008, reference 01, representative's decision is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant is overpaid unemployment insurance benefits in an amount of \$870.00.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs