

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARK SIGMUND**

Claimant

**APPEAL NO. 09A-UI-03218-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CAMBRIDGE TEMPOSITIONS INC**

Employer

**Original Claim: 10/19/08  
Claimant: Respondent (2-R)**

Iowa Code § 96.5-1-j - Voluntary Quit of Temporary Employment  
Iowa Code § 96.7(2)a(6) - Appeal from Statement of Charges  
Iowa Code § 96.6-2 - Timeliness of Protest

**STATEMENT OF THE CASE:**

Cambridge TemPositions (employer) appealed from the fourth quarter 2008 statement of charges, dated February 9, 2009, which showed that the employer's account was being charged for benefits paid to Mark Sigmund (claimant). A decision was issued on February 24, 2009, reference 04, which held the employer failed to file a timely protest regarding the claimant's separation of employment on October 23, 2008 and no disqualification of unemployment insurance benefits was imposed. The employer appealed that decision. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 25, 2009. The claimant's hearing notice was returned as undeliverable because he moved and left no forwarding address. Consequently, he did not participate in the hearing. The employer participated through Stephanie Matteson, Account Manager. Exhibit D-1 was admitted into evidence. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The first issues to be determined are whether the employer's appeal from its quarterly statement of charges is timely and whether its protest in this matter was timely, and if so, whether the claimant should be disqualified if he failed to contact the temporary employment agency within three working days after the completion of his assignment when notified of this requirement at the time of hire.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: A notice of claim was mailed to the employer's address of record on October 23, 2008 and the protest was due on November 3, 2008. The employer received the notice of claim on October 24, 2008 and faxed its protest on that same date. Iowa Workforce never received the employer's protest.

The fourth quarter 2008 statement of charges was mailed to the employer on February 9, 2009, and the employer received it. The employer notified Iowa Workforce Development on February 12, 2008 that the original notice of claim had been received and a protest was faxed on October 24, 2008.

The claimant worked for the employer intermittently since 1997. His most recent date of hire was November 6, 2007, when he was hired as a temporary laborer. At the time of hire, the claimant signed an availability statement that advised him of the requirement to check in for additional work after the completion of an assignment. The employer requires employees to check in within three working days after an assignment ends to provide the employer notification of the claimant's availability, and failure to do so would be considered as a voluntary quit. The claimant was given a copy of the availability statement, which is not part of the application or contract of employment.

The claimant's last assignment ended on October 23, 2008. He did not check in with the employer for additional assignments. The claimant was considered to have voluntarily quit his employment as of October 28, 2008.

The claimant filed a claim for unemployment insurance benefits effective October 19, 2008 and has received benefits after the separation from employment.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 96.6-2 provides in pertinent part:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant.

Iowa Code § 96.7-2-a(6) provides:

2. Contribution rates based on benefit experience.
  - a. (6) Within forty days after the close of each calendar quarter, the department shall notify each employer of the amount of benefits charged to the employer's account during that quarter. The notification shall show the name of each individual to whom benefits were paid, the individual's social security number, and the amount of benefits paid to the individual. An employer which has not been notified as provided in section 96.6, subsection 2, of the allowance of benefits to an individual, may within thirty days after the date of mailing of the notification appeal to the department for a hearing to determine the eligibility of the individual to receive benefits. The appeal shall be referred to an administrative law judge for hearing and the employer and the individual shall receive notice of the time and place of the hearing.

The employer received the notice of claim and filed a protest in a timely manner on October 24, 2008, but the agency did not receive the fax transmission. The employer was unaware that charges were made to its account on behalf of the claimant until it received the fourth quarterly statement of charges for 2008. The employer responded within three days of that notice to protest the payment of benefits to the claimant. Therefore, the protest shall be accepted as timely.

The substantive issue in this case is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer or if the employer discharged him for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a. The employer herein is a temporary employment agency and temporary employment agencies are governed by Iowa Code § 96.5-1-j, which places specific restrictions on both the employer and the employee with regard to qualification for unemployment insurance benefits after a voluntary separation.

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.

The evidence indicates the claimant knew or should have known he was required to contact the employer after the completion of his assignment so the employer could assign him to another job. The claimant did not contact the employer after his assignment ended on October 23, 2008. The claimant did not satisfy the requirements of Iowa Code § 96.5-1-j and is disqualified from receiving unemployment insurance benefits as of October 25, 2008.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

**DECISION:**

The employer's protest is timely. The unemployment insurance decision dated February 24, 2008, reference 04, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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