

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LACY T MOORE**

Claimant

**APPEAL NO. 13A-UI-00880-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEAM STAFFING SOLUTIONS INC**

Employer

**OC: 12/16/12**

**Claimant: Respondent (2-R)**

Section 96.5-1 - Voluntary Quit

Section 96.3-7 - Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated January 18, 2013, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on February 26, 2013. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Sarah Fieldler participated in the hearing on behalf of the employer.

**ISSUES:**

Did the claimant voluntarily quit employment without good cause attributable to the employer?  
Was the claimant overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and would be considered to have quit after three days of absence without notifying the employer.

The claimant worked for the employer from May 14, 2012, to August 15, 2012. His last assignment was working at Pioneer Hybrid. After August 15, the claimant was in jail and did not report to work or notify the employer that he was unable to work. After three days of absence without notice, the employer considered him to have quit. On August 22, the claimant's girlfriend informed the employer that the claimant was incarcerated.

The claimant filed for and received a total of \$516.00 in unemployment insurance benefits for the weeks between December 16, 2012, and January 12, 2013.

**REASONING AND CONCLUSIONS OF LAW:**

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code § 96.5-1.

Under the unemployment insurance rules, a claimant who leaves work because he has been incarcerated is presumed to have left work without good cause. 871 IAC 24.25(16). Also, the unemployment insurance rules state that a claimant absent for three days without giving notice to employer in violation of company rule is presumed to have quit employment without good cause attributable to the employer. 871 IAC 24.25(4).

The facts show the claimant left work due to being in jail and was absent from work for three days without notice to the employer. He is considered to have quit employment without good cause attributable to the employer.

The unemployment insurance law requires benefits to 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. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

**DECISION:**

The unemployment insurance decision dated January 18, 2013, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

---

Steven A. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

saw/pjs