

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRENT BRUZLAFF
Claimant

APPEAL NO: 12A-UI-02800-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WORKSOURCE INC
Employer

OC: 12/04/11
Claimant: Respondent (2/R)

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.4-3 - Able and Available for Work
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Worksource, Inc. (employer) appealed an unemployment insurance decision dated March 19, 2012, reference 01, which held that Brent Bruzloff (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 4, 2012. The claimant provided a telephone number but when the number was called, it was not a working number. He called the Appeals Section during the hearing and the clerk verified the telephone number he had provided. However, that was a non-working number and the administrative law judge had the clerk try the number but she could not get through either. The claimant did not call the Appeals Section again and therefore did not participate in the hearing. The administrative law judge waited ten days before submitting the decision and the claimant had not called the Appeals Section in the interim.

The employer participated through Derrick Flippin, Senior Account Manager. Employer's Exhibits One and Two were admitted into evidence. The separation issues were inadvertently left off the hearing notice. The employer waived its right to a formal notice of the issues so they could be addressed in the hearing today. 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 issues are whether the claimant was able and available to work and whether his voluntary separation from employment qualifies him to receive unemployment insurance benefits?

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 April 12, 2010 and worked in a couple of assignments. The employer laid him off work on October 1, 2010 but made a job offer on October 8, 2010 for an assignment at Hold Sales and Service. The claimant accepted the job

and it was scheduled to begin on October 11, 2010 but the claimant was a no-call/no-show. The employer called him numerous times but was unable to reach him and the claimant never returned the calls. The claimant finally called the employer on October 12, 2010 and stated that he could not start the job due to a tooth problem. He next called in his availability for work on October 19, 2010 but the position had been filled by that time.

The employer did not hear from the claimant again until January 3, 2012 when he called in his availability. The employer offered him a temp to hire position at 3E and he accepted the position on January 4, 2012. The position started on January 5, 2012 after the claimant passed a drug screen. He called in sick on January 25 and 26, 2012. The claimant was a no-call/no-show on January 27, 2012 but he arrived at the employer's office that morning to pick up his check. The claimant said he was not returning to 3E because he was bored and got a new job but he did not want to say where it was. The employer never heard from the claimant after that except for when the claimant called the employer about his check.

The claimant filed a claim for unemployment insurance benefits effective December 4, 2011 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be determined is whether the claimant met the able and available requirements at the time he filed his claim for unemployment insurance benefits. For the following reasons, the administrative law judge concludes he did not.

Iowa Code § 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.23(29) provides:

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

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). He filed his claim for benefits effective December 4, 2011. The claimant had not worked for the employer since 2010 and did not sign up for any additional work until February 3, 2012. Consequently, he does not meet the availability requirements from December 4, 2011 through January 28, 2012 when he separated from his employment.

The next issue to be determined 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. Iowa Code § 96.5-1.

Iowa Code § 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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out by failing to return to his temp to hire position at 3E on January 25, 2012 and thereafter. He further carried out the intent to quit when he told the employer on January 27, 2012 that he was not going to return to 3E.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. He has not satisfied that burden. Benefits are denied.

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 unemployment insurance decision dated March 19, 2012, reference 01, is reversed. The claimant was not able and available from December 4, 2011 through January 28, 2012. He is disqualified thereafter because he 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.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css