

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MACGYER WILLIAM
Claimant

APPEAL NO: 10A-UI-16513-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**L A LEASING INC
SEDONA STAFFING**
Employer

**OC: 02/14/10
Claimant: Respondent (2/R)**

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

STATEMENT OF THE CASE:

Sedona Staffing (employer) appealed a representative's November 22, 2010 decision (reference 02) that concluded Macgyer William (claimant) was eligible to receive unemployment insurance benefits based on his separation from work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 20, 2011. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Colleen McGuinty, Unemployment Benefits Administrator.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary employment service. The claimant performed services from July 24, 2009, through September 17, 2010. He signed a document when he applied for work on October 9, 2007, indicating that he was to contact the employer within three days following the completion of an assignment to request placement in a new assignment. The claimant was given a copy of the document which was part of the contract for hire.

The claimant started his last assignment on August 31, 2010, and worked through September 17, 2010. On September 20, 2010, the claimant did not appear for work or notify the employer of his absence. The employer left a message for the claimant on September 20, 2010. The claimant returned the call on September 21, 2010, and said he did not have transportation. The employer informed the claimant that failure to properly report an absence was unacceptable. The claimant had to come into the office and sign for receipt of the written warning before he could return to work. The claimant never appeared to sign for receipt of the warning. Continued work was available had the claimant not resigned.

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.

871 IAC 24.25(1) and (28) provide:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(1) The claimant's lack of transportation to the work site unless the employer had agreed to furnish transportation.

(28) The claimant left after being reprimanded.

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 failed to appear to sign for receipt of the warning and return to work. When an employee quits work because of lack of transportation or after having been reprimanded, his leaving is without good cause attributable to the employer. The claimant left work because he did not have transportation to work and was reprimanded. His leaving was without good cause attributable to the employer. The claimant voluntarily quit 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.

The claimant has received benefits since filing the claim herein. Pursuant to this decision, those benefits may now constitute an overpayment. The issue of the overpayment is remanded for determination.

DECISION:

The representative's November 22, 2010 decision (reference 02) 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 issue of the overpayment is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css