

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSE L DELAROSA
Claimant

APPEAL NO. 10A-UI-12146-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SPHERION STAFFING LLC
Employer

OC: 07/04/10
Claimant: Respondent (2R)

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

STATEMENT OF THE CASE:

Employer. filed a timely appeal from a representative's decision dated August 20, 2010, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was held on October 20, 2010. The claimant participated personally. The employer participated by Mr. Robert Campos.

ISSUE:

The issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Jose Delarosa was employed by Spherion Staffing from September 16, 2009 until April 23, 2010 when he discontinued reporting for scheduled work. Mr. Delarosa was assigned to work at the H P Company as a warehouse worker and was paid by the hour.

Mr. Delarosa completed his duties on Friday, April 23, 2010 and was expected to return to work the following workday, April 26, 2010. After the claimant did not report or provide notification about his impending absence for three or more consecutive workdays the employer reasonably concluded that the claimant had voluntarily left his employment with the company. Subsequently it was reported by another worker that Mr. Delarosa had left for a new job. The employer attempted on numerous occasions to contact Mr. Delarosa but the company's calls went unanswered and Mr. Delarosa did not return messages that were left for him.

It is the claimant's position that he was told by a company staff member that he need not report to work and that the company would call him back to work later.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that the claimant left employment 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.

In this case Mr. Delarosa was assigned to work on a long-term assignment at the H P Company working from September of 2009 through April 23, 2010. The evidence in the record establishes that the claimant continued to be scheduled to work and was expected to report for work the following Monday, April 26, 2010. When the claimant did not report for scheduled work, the employer left numerous phone messages for Mr. Delarosa and the employer's phone messages were not returned. Company documentation showed that work continued to be available to the claimant and that the employer would have no reason to tell Mr. Delarosa to discontinue reporting for scheduled work. Although the claimant maintains that he called the employer on a number of occasions, company records do not reflect any calls from Mr. Delarosa. After the claimant had been absent without notification for a number of days and another employee indicated to the company that the claimant left to take other work.

In this case the employer's witness testified with specificity regarding the work available, the contacts made and notations made on the company's records about Mr. Delarosa and his failure to report for scheduled work. In contrast, the claimant did not testify with specificity, only maintaining that he had been told by "Theresa" that he should not return to work. In view of the claimant's failure to return numerous telephone calls that were left for him, the administrative law judge concludes that the weight of evidence is established in favor of the employer.

871 IAC 24.25(4) provides:

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:

- (4) The claimant was absent for three days without giving notice to employer in violation of company rule.

Based upon the facts of this case and the application of the law, the administrative law judge concludes that the claimant left employment without good cause attributable to the employer. Benefits are withheld.

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.

DECISION:

The representative's decision dated August 20, 2010, reference 01, is reversed. The claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, providing that he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

css/css