

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KYLE P BAHNSEN
Claimant

APPEAL NO. 09A-UI-18247-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RIVERSIDE STAFFING SERVICES INC
Employer

OC: 10/18/09
Claimant: Respondent (2-R)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 25, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on January 13, 2010. Claimant Kyle Bahnsen did not respond to the hearing notice instructions and did not participate. Karrie Minch, Senior Staffing Consultant, represented the employer.

ISSUE:

Whether the claimant separated employment for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency. Kyle Bahnsen performed work in two temporary full-time work assignments at the same client business. The first assignment began in November 2008 and ended in March 2009, when the assignment was complete. Mr. Bahnsen accepted a second assignment and reported to the assignment on May 18, 2009. On May 19, 2009, Mr. Bahnsen was absent without notifying the employer. Employer has never heard from Mr. Bahnsen again. At the time Mr. Bahnsen ceased appearing for the assignment, the employer and the client business continued to have work available for Mr. Bahnsen.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

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.

Mr. Bahnsen failed to participate in the hearing and thereby failed to present any evidence. The weight of the evidence in the record establishes that Mr. Bahnsen voluntarily quit and was not discharged or laid off from the second work assignment in May 2009. The evidence establishes instead that Mr. Bahnsen elected not to continue in the assignment after he had started performing work in the assignment and voluntarily quit for personal reasons without completing the assignment. Mr. Bahnsen's voluntary separation from the employment was without good cause attributable to the employer. Accordingly, Mr. Bahnsen is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Bahnsen.

Iowa Code section 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 section 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 would 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 Agency representative's November 25, 2009, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

This matter is remanded 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css