

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ROBERT R SULLIVAN
2406 HULL AVE
DES MOINES IA 50317

DES STAFFING SERVICES INC
3326 INDIANOLA AVE
DES MOINES IA 50315

AMENDED

Appeal Number: 05A-UI-00949-BT
OC: 12/19/04 R: 02
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1-j - Voluntary Quit of Temporary Employment
Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

DES Staffing Services, Inc. (employer) appealed an unemployment insurance decision dated January 21, 2005, reference 04, which held that Robert Sullivan (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 February 14, 2005. The claimant participated in the hearing. The employer participated through Kathy Anderson, Human Resources Coordinator and Elisa Rivera, Placement Specialist.

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 employed as a temporary production employee from February 17, 2004 through July 28, 2004. He is considered to have voluntarily quit his employment. The employer took him off the available list after a week in which he did not turn in any work hours and did not contact the employer to indicate the assignment was over or that he was available for additional assignments. His last assignment was at Air-Tex and the employer had work available.

The claimant filed a claim for unemployment insurance benefits effective December 19, 2004 and has received benefits after the separation from employment in the amount of \$1,301.00.

REASONING AND CONCLUSIONS OF LAW:

The issue 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 or if the employer discharged him for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a. An individual who is a temporary employee of a temporary employment firm may be disqualified from receiving unemployment insurance benefits if the individual does not notify the temporary employment firm within three working days after ending a job assignment in an attempt to obtain another job assignment. To be disqualified from receiving benefits, at the time of hire the employer must advise the individual in writing of the three-day notification rule. The employer must also notify the individual that he may be disqualified from receiving unemployment insurance benefits if he fails to notify the employer. Iowa Code § 96.5-1-j.

The claimant failed to contact his employer after his last assignment and therefore did not satisfy the requirements of Iowa Code § 96.5-1-j. He contends otherwise though and states the employer contacted him to tell him his assignment was over. He further contends that he spoke with the employer several times but that they did not have any additional work. The claimant's contentions are not as credible as the evidence provided by the employer. There were two employer witnesses who both denied speaking with the claimant. Since this is the employer's business, they keep accurate and documented records of all employee contacts. Furthermore, if the claimant had talked to the employer after his last assignment, he would have been placed in another assignment as the employer has continuing work available. The claimant is disqualified from receiving unemployment insurance benefits as of December 19, 2004.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated January 21, 2005, reference 04, is reversed. The claimant 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 claimant is overpaid benefits in the amount of \$1,301.00.

sdb/tjc/pjs