

**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**

**CHRISTOPHER J WARD
2210 EMERALD DR
DAVENPORT IA 52804**

**RIVERSIDE STAFFING SERVICES INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-09458-RT
OC: 08-01-04 R: 12
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)

871 IAC 24.43(9) – Combined Wage Claim Transfer of Wages (Employer Relieved of Charges)
Section 96.5-1 – Voluntary Quitting

STATEMENT OF THE CASE:

The employer, Riverside Staffing Services, Inc., filed a timely appeal from an unemployment insurance decision dated August 24, 2004, reference 02, determining that the employer cannot be relieved of charges for benefits to which the claimant may be entitled from another state under a combined wage claim. After due notice was issued, a telephone hearing was held on September 27, 2004, with the claimant not participating. Although the claimant had called in a telephone number where he purportedly could be reached for the hearing, when the administrative law judge called that number at 10:01 a.m., he reached a voice mail identifying the telephone number as that of the “Wards.” The administrative law judge left a message that

he was going to proceed with the hearing and if the claimant wanted to participate, he needed to call before the hearing was over and the record was closed. The administrative law judge provided an 800 number for the claimant to use. The claimant did not call before the hearing was over. Karrie Minch, Senior Staffing Consultant, participated in the hearing for the employer. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency. The claimant was employed by the employer full-time in a long-term assignment to Miller Container from December 1, 2003 until he voluntarily quit effective January 9, 2004. On January 5, 2004, the claimant called the employer and informed the employer that he would not be at work at Miller Container that day because he did not have transportation. The claimant said nothing more about any other days. Nevertheless, the claimant was absent that day and January 6, 7, 8, and 9, 2004. The claimant called the employer on January 9, 2004 and informed the employer that he had not been at work all week because he had no transportation. The claimant had no reason why he had not called the employer on January 6, 7, and 8, 2004. The employer informed the claimant that under their policies his absences as a no-call/no-show were considered a quit and that he was terminated. When the employer contacted Miller Container, Miller Container determined the same thing, that the claimant was terminated as a no-call/no-show for five days. The employer has not heard from the claimant since. Apparently the claimant has filed a combined wage claim in Illinois and been approved for benefits. The only issue before the administrative law judge is whether the employer here, Riverside Staffing Services, Inc., should be charged for any unemployment insurance benefits to which the claimant is entitled.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the employer should be charged for any unemployment insurance benefits to which the claimant may be entitled under the combined wage claim filed in Illinois. The administrative law judge concludes that the employer should not be charged for such benefits.

871 IAC 23.43(9) provides in part:

(9) Combined wage claim transfer of wages.

a. Iowa employers whose wage credits are transferred from Iowa to an out-of-state paying state under the interstate reciprocal benefit plan as provided in Iowa Code section 96.20, will be liable for charges for benefits paid by the out-of-state paying state, but no reimbursement so payable shall be charged against a contributory employer's account for the purpose of section 96.7, unless wages so transferred are sufficient to establish a valid Iowa claim, and that such charges shall not exceed the amount that would have been charged on the basis of a valid Iowa claim. However, an employer who is required by law or by election to reimburse the trust fund will be liable for charges against the employer's account for benefits paid by another state as required in section 96.8(5), regardless of whether the Iowa wages so transferred are sufficient or insufficient to establish a valid Iowa claim....

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

The employer's wage credits for the claimant were transferred to Illinois under a combined wage claim. The employer will be liable for charges for benefits paid by Illinois only if the wages so transferred are sufficient to establish a valid Iowa claim. In order to determine this issue, the administrative law judge concludes that he must determine whether the claimant would have been disqualified to receive unemployment insurance benefits under Iowa law. The administrative law judge concludes that there is a preponderance of the evidence that the claimant would have been disqualified to receive unemployment insurance benefits pursuant to a separation from the employer here, under Iowa law, and therefore, the employer here, Riverside Staffing Services, Inc., should not be charged for any unemployment insurance benefits to which the claimant may be entitled in Illinois.

The employer's witness, Karrie Minch, Senior Staffing Consultant, credibly testified, and the administrative law judge concludes, that the claimant voluntarily quit on January 9, 2004. Ms. Minch testified that the claimant was absent the entire week from an assignment at Miller Container, from January 5, 2004 through and including January 9, 2004. The employer is a temporary employment agency and had assigned the claimant to a long-term full-time position with Miller Container in Illinois. The claimant did not satisfactorily complete this assignment because he was absent as noted above. The claimant called the employer on January 5, 2004 and informed the employer that he would not be at work because of transportation. At that time the claimant said nothing more about further days. However, the claimant missed four more days, January 6, 7, 8, and 9, 2004. On January 9, 2004, the claimant called the employer and informed them that he had not been at work all week because of transportation. The employer had not promised to provide transportation and had not provided transportation for the claimant. The claimant provided no reason why he had not informed the employer of the absences on January 6, 7, 8, and 9, 2004 at least before he called on January 9, 2004. The employer has a rule or policy that states that such no-call/no-show absences are treated as a voluntary quit.

The claimant did not participate in the hearing and provide evidence to the contrary. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily when he was absent for three days in a row without giving notice to the employer in violation of the employer's rule. The issue then becomes whether the claimant left his employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The claimant did not participate in the hearing and provide evidence of reasons attributable to the employer for his quit. Rather, Ms. Minch credibly testified that the claimant quit because he had no transportation. Leaving work voluntarily because of a lack of transportation to the work site when the employer has not agreed to furnish transportation is not good cause attributable to the employer. Ms. Minch credibly testified that the employer had not promised or provided transportation to the claimant. There is no evidence that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental or that he was subjected to a substantial change in his contract of hire. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily without good cause attributable to the employer and, as a consequence, the employer should not be charged for any unemployment insurance benefits to which the claimant may be entitled on his combined wage claim in Illinois. Any benefits to which the claimant is entitled pursuant to his combined wage claim in Illinois shall not be charged to the account of the employer herein. The administrative law judge reaches no conclusion as to whether the claimant is entitled to any unemployment insurance benefits because this is a decision to be made by the paying state, Illinois.

DECISION:

The representative's decision of August 24, 2004, reference 02, is reversed. The employer, Riverside Staffing Services, Inc., shall be relieved of any charges based on benefits paid by another state including Illinois, under a combined wage claim, because under Iowa law the employer would not have been charged for such benefits because the claimant's separation from the employer was disqualifying when he voluntarily quit without good cause attributable to the employer. The administrative law judge reaches no conclusion as to whether the claimant is entitled to unemployment insurance benefits under the claim from the paying state, Illinois.

pjs/tjc