

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALICIA D SMITH**  
Claimant

**APPEAL NO. 12A-UI-12716-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEAM STAFFING SOLUTIONS INC**  
Employer

**OC: 08/05/12**  
**Claimant: Appellant (4-R)**

Section 96.5-1-j – Voluntary Quit/Failure to Seek Re-Assignment  
871 IAC 24.27 – Part-time Employment  
Section 96.3- 7 – Recovery of Overpayment

**STATEMENT OF THE CASE:**

The claimant appealed from a representative's decision dated October 19, 2012, reference 04, that held claimant voluntarily quit without good cause on September 17, 2012, and denies benefits. A telephone hearing was held on November 19, 2012. The claimant did not participate. Sarah Fiedler, Claims Administrator, participated for the employer. Employer Exhibit 1 was received as evidence.

**ISSUES:**

Whether claimant voluntarily quit with good cause attributable to the employer.

Whether claimant is overpaid unemployment benefits.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds that: The claimant was re-hired on August 20, 2012 to work a part-time baker production job at Baker's Pride, and she signed an employer policy that provides she must seek re-assignment within three days of job completion. The claimant last worked the assignment on September 17. A Baker's Pride representative notified claimant she completed her assignment and advised she should contact the employer. Claimant did not contact the employer for three days after job completion. The employer left telephone messages on two different phone numbers for claimant beginning September 18 about job completion and further work, and claimant did not respond.

Claimant is receiving unemployment benefits on her claim. She failed to respond to the hearing notice.

Claimant had previously worked at Winegard Company (ER#026548) and she received a favorable ALJ decision on October 10, 2012 regarding her August 6 employment separation (Appeal Number 12A-UI-10690-VT).

## REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

Iowa Code section 96.5-1-j 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, but the individual shall not be disqualified if the department finds that:

j. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.

To show that the employee was advised in writing of the notification requirement of this paragraph, the temporary employment firm shall advise the temporary employee by requiring the temporary employee, at the time of employment with the temporary employment firm, to read and sign a document that provides a clear and concise explanation of the notification requirement and the consequences of a failure to notify. The document shall be separate from any contract of employment and a copy of the signed document shall be provided to the temporary employee.

For the purposes of this paragraph:

(1) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their work force during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(2) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

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 administrative law judge concludes the claimant voluntarily quit part-time employment without good cause attributable to her employer on September 17, 2012 when she failed to seek re-assignment within three days from her assignment completion.

Claimant signed a work assignment availability agreement just before she started at Baker's Pride that she needed to contact the employer within three working dates of job completion. Her failure to do so is considered a voluntary quit without good cause. Since this was part-time employment, this separation issue is remanded to determine whether claimant has sufficient wage credits earned from other base period employment (Winegard Company) to see whether she is eligible for benefits and/or overpaid unemployment benefits.

If claimant is eligible for benefits, the employer is not charged. If she is not eligible, the Claims Section shall determine the overpayment with the issuance of a decision.

**DECISION:**

The department decision dated October 19, 2012 reference 04 is modified. The claimant voluntarily quit without good cause part-time employment on September 17, 2012. Benefits are allowed, provide claimant is otherwise eligible. The part-time eligibility issue and the overpayment issue are remanded to Claims.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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