

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHNNY GOMEZ
Claimant

APPEAL NO. 12A-UI-01152-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING INC
Employer

OC: 12/04/11
Claimant: Respondent (2-R)

Section 96.5-1 - Voluntary Quit
Section 96.6-2 - Timeliness of Appeal
Section 96.3-7 - Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 18, 2012, reference 01, that concluded the claimant completed his temporary work assignment and was eligible for benefits. A telephone hearing was held on February 27, 2012. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Chad Baker participated in the hearing on behalf of the employer with a witness, Carrie Cannon. Exhibit A-1 was admitted into evidence at the hearing.

ISSUES:

Did the employer file a timely appeal?
Did the claimant voluntarily quit employment without good cause attributable to the employer?
Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis.

The claimant's last assignment was working full time as a general laborer at Quad Graphics from June 28, 2011, through July 20, 2011. On July 20, 2011, the claimant informed the employer that he was quitting his job at Quad Graphics because he had developed back spasms that were not work related and had decided he could no longer do the work.

An unemployment insurance decision was mailed to the employer's last-known address of record on January 18, 2012. The decision concluded the claimant was eligible for unemployment insurance benefits and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by January 30, 2012. The appeal was received by Iowa Workforce Development on January 27, 2012. The employer was not able to successfully fax the appeal to the Appeals Bureau fax so it was sent by email attachment, which was received by an IWD workforce advisor on January 27.

The claimant filed for and received a total of \$2,535.00 in unemployment insurance benefits for the weeks between December 4, 2011, and February 11, 2012.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the employer filed a timely appeal.

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. Iowa Code § 96.6-2. I conclude that the appeal sent by email was received by the agency on January 27, 2012, before the appeal deadline. The appeal was timely.

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code § 96.5-1.

The unemployment insurance law provides that individual is qualified to receive benefits if he: (1) left employment because of illness, injury or pregnancy with the advice of a licensed and practicing physician, (2) notified the employer that he needed to be absent because of the illness or injury, and (3) offered to return to work for the employer when recovery was certified by a licensed and practicing physician, but his regular work or comparable suitable work was not available. Iowa Code § 96.5-1-d.

The evidence establishes the claimant left an ongoing work assignment for reasons not caused by the employer. If he left for medical reasons, he would have to satisfy Iowa Code § 96.5-1-d, which he has not done in this case. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

There was some evidence presented about an offer of work made by the employer for an assignment at Lumber Specialists in early August. Refusal of suitable work was not an issue noticed for the hearing. If the decision on the voluntarily quit is overturned on appeal, this issue will be remanded back to the Agency to adjudicate.

The unemployment insurance law requires benefits to 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. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated January 18, 2012, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs