

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**GAYLA L GALBRAITH**  
Claimant

**AZULE STAFFING LLC**  
Employer

**APPEAL 18A-UI-02600-JCT**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/02/17**  
**Claimant: Respondent (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer filed an appeal from the February 15, 2018, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 23, 2018. The claimant registered a phone number but did not participate in the hearing. The registered number was called and twice was connected. However, the claimant failed to participate or speak before initiating disconnection twice. The employer participated through Dara Yang, risk manager. Kalli Whiteford, on-site manager, also testified. Employer Exhibit 1 was admitted. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**NOTE TO EMPLOYER:**

If you wish to change the address of record, please access your account at: <https://www.myiowaui.org/UITIPTaxWeb/>.

**ISSUES:**

Did the claimant quit by not reporting for an additional work assignment within three business days of the end of the last assignment?  
Was the claimant discharged for disqualifying job-related misconduct?  
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can any charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant was last assigned at AGCO from September 11, 2017, to November 15, 2017. After the assignment ended, the claimant failed to report to the employer

and request further assignment as required by written policy. (Employer's Exhibit 1) The employer's policy requires a claimant contact the employer within five business days to request new assignment. The employer documents its contacts with employees, and stated the next contact made by the claimant to the employer was on January 29, 2018.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$6,679.00, since her separation of November 15, 2017. The administrative record also establishes that the employer did not participate in the fact-finding interview or make a witness with direct knowledge available for rebuttal. The employer received notice of the fact-finding interview but missed the scheduled call due to a meeting. Ms. Yang retrieved the voicemail for the 10:20 a.m. fact-finding interview, at 10:50 a.m. The voicemail stated the employer had until 11:00 to respond to the voicemail. Ms. Yang documented her attempts to call the IWD representative back at 10:55 a.m. but was not permitted to leave a statement, message or participate.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer.

Iowa Code section 96.5(1)j provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. (1) 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.

(2) 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.

(3) For the purposes of this paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce during

absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

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

Iowa Admin. Code r. 871-24.26(19) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of each temporary assignment so they may be reassigned and continue working. The plain language of the statute allows benefits for a claimant "who notifies the temporary employment firm of completion of an employment assignment *and* who seeks reassignment." (Emphasis supplied.)

In this case, the claimant was separated from her assignment at AGCO but not employment on November 15, 2017. The claimant was eligible for a new assignment but did not request another assignment and, therefore, is considered to have quit the employment, even though she may have contacted the temporary agency at some later date. The employer's next contact with the claimant was in January 2018. Benefits are denied.

**The final issue to address is whether there is any overpayment and relief of charges for the employer.**

Iowa Code section 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

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 division of job service 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 division a sum equal to the overpayment.

Because the claimant's separation was disqualifying, benefits were paid to which she was not entitled. The claimant has been overpaid benefits in the amount of \$6,679.00. The unemployment insurance law 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits 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. In this case, the claimant did not receive any benefits and therefore there is no overpayment in accordance with Iowa Code § 96.3(7).

The law also states that an employer is to be charged if "the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits." Iowa Code § 96.3(7)(b)(1)(a). Here, the employer did receive notice and planned to attend the fact-finding interview. When the employer missed the call, it called the IWD representative back within the allotted time provided in a voicemail. For unknown reasons, the employer was still not permitted to participate. Benefits were not allowed because the employer failed to respond timely or adequately to IWD's request for information relating to the payment of benefits. Instead, benefits were allowed because the employer was not given a reasonable opportunity to participate after returning the representative's call within the prescribed period. Therefore, the administrative law judge concludes that the employer cannot be charged. Since neither party is to be charged, any potential charges for this claim should be absorbed by the fund.

**DECISION:**

The February 15, 2018, (reference 02) decision is reversed. The claimant's separation was not attributable to the employer. Benefits are withheld until such time as she works in and has been paid for wages equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant has been overpaid benefits in the amount of \$6,679 and is not obligated to repay the benefits. The employer's account is relieved of charges associated with the claim.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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