

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARLOS M HERNANDEZ
Claimant

APPEAL NO. 08A-UI-01959-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES STAFFING SERVICES INC
Employer

OC: 01/20/08 R: 02
Claimant: Respondent (2)

Section 96.5(1)j – Quit/Temporary

STATEMENT OF THE CASE:

The employer, DES Staffing Services, Inc. (DES), filed an appeal from a decision dated February 25, 2008, reference 03. The decision allowed benefits to the claimant, Carlos Hernandez. After due notice was issued, a hearing was held by telephone conference call on March 13, 2008. The claimant participated on his own behalf and Ike Rocha acted as interpreter. The employer participated by Human Resources Manager Amy MacGregor. Exhibit One was admitted into the record.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Carlos Hernandez began employment with DES on April 8, 2002. On January 21, 2008, he signed a document informing him of his obligation to notify the employer within three days of the end of each assignment. He received a copy of the document which was written in Spanish, his primary language.

Mr. Hernandez began his last assignment at Reams Foods on January 22, 2008, and it was to be on-going. However, he worked only two days and was no-call/no-show to work after that. He never notified either DES or the client company. After three working days, on January 28, 2008, he was considered a voluntary quit under the provisions of the document he signed.

Carlos Hernandez has received unemployment benefits since filing a claim with an effective date of February 25, 2008.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant signed, and was given a copy, of a specific document, written in his primary language, that he had to contact the temporary agency within three days of the end of each assignment. He failed to do this. Under the provisions of the above Code section, this is a voluntary quit without good cause attributable to the employer and he is disqualified.

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.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of February 25, 2008, reference 03, is reversed. Carlos Hernandez is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$1,347.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw