

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CADEN J VANHEMERT
Claimant

APPEAL 20A-UI-16069-ED-T
ADMINISTRATIVE LAW JUDGE
DECISION

SUPREME STAFFING INC
Employer

OC: 07/05/20
Claimant: Respondent (2)

Iowa Code § 96.19(38) – Totally, Partially or Temporarily unemployed
Iowa Code § 96.4(3) – Able and Available
Iowa Code § 96.3(7) – Recovery of Overpayment Benefits
IAC R. 871-24.26 – Employer Participation in Fact Finding
Iowa Code § 96.5(1)j – Temporary Employment Firm
PL 116-136, SEC. 2104

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the November 19, 2020, (reference 02) unemployment insurance decision that awarded benefits. The parties were properly notified of the hearing. A telephone hearing was held on February 1, 2021. The claimant, Caden Van Hemert participated personally. The employer, Supreme Staffing Inc participated through Mike Riehl. Employer's Exhibit A through E were received.

ISSUES:

Did claimant make a timely request for a new job assignment?
Was claimant able and available to work?
Was claimant totally, partially or temporarily unemployment?
Is there a recovery of overpayment benefits?
Should claimant repay benefits and/or charge employer due to participation in factfinding?
Did the claimant make a timely request for a new job assignment?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a machine operator at Supreme Staffing Inc, a temporary employment firm. On May 11, 2020, Claimant signed and dated a Supreme Staffing policy statement that acknowledged he understood he must notify Supreme Staffing within three working days of completion of assignment and request another assignment. Claimant was most recently assigned to work at Oskaloosa Engineering and Manufacturing. Claimant's assignment ended on June 25, 2020. On June 25, 2020, Mr. Riehl contacted Mr. Van Hemert to let him know and his assignment ended. Mr. Riehl did not hear from claimant again. Mr. Riehl did not participate in the fact finding interview in this matter on behalf of the employer.

There was continuing work available if claimant had not voluntarily quit his employment. Claimant was not going to be discharged or laid off for lack of work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the separation was without good cause attributable to the employer. Benefits are denied.

Iowa Code § 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. (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 assignment and who seeks reassignment.”

In this case, the employer had notice of the claimant’s availability because it notified him of the end of the assignment on June 25, 2020, but claimant did not follow up with the employer within three working days to request another assignment.

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness’s testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness’s appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness’s interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer’s version of events to be more credible than the claimant’s recollection of those events.

As such, the claimant failed to comply with Iowa Code section 96.5(1)j and he voluntarily quit employment without good cause attributable to the employer. The separation is disqualifying. Benefits are denied.

The next issue to be determined is whether claimant has been overpaid benefits. For the reasons that follow, the administrative law judge concludes claimant was overpaid benefits, which must be repaid.

Iowa Code section 96.3.(7) states:

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.

Because the qualifying decision has been reversed, benefits were paid to which claimant was not entitled. The administrative law judge concludes that claimant has been overpaid UI in the gross amount of \$3,192.00 for the period between July 11, 2020 and November 30, 2020.

The benefits were not received due to any fraud or willful misrepresentation by the claimant. Additionally, the employer did not participate in the initial proceeding to award benefits. As such, the claimant is not obligated to repay to the agency benefits he received in connection with this employer's account.

The next issue to be determined is whether claimant has been overpaid FPUC benefits.

PL116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

....

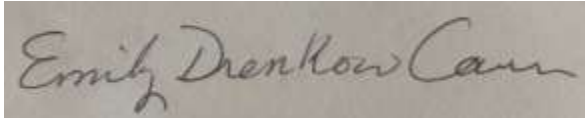
(f) Fraud and Overpayments

(2) Repayment.--In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

Because claimant is disqualified from receiving regular state UI, he is also disqualified from receiving FPUC. The administrative law judge concludes that claimant has been overpaid FPUC in the gross amount of \$3,600.00 for the period between July 11, 2020 and November 30, 2020.

DECISION:

The November 13, 2020 (reference 02) unemployment insurance decision is reversed. Claimant voluntarily quit without good cause attributable to the employer. Benefits are denied. Claimant has been overpaid regular unemployment insurance benefits in the gross amount of \$3,192.00 for the period between July 11, 2020 to November 30, 2020, which do not need to be repaid. Claimant was also overpaid FPUC in the gross amount of \$3,600.00.



Emily Drenkow Carr
Administrative Law Judge

February 16, 2021
Decision Dated and Mailed

ed/ol

Note to Claimant:

This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.