

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**CORY A SHELTON
208 W 7TH ST
TAMA IA 52339**

**TEMP ASSOCIATES – MARSHALLTOWN
307 W MAIN ST
MARSHALLTOWN IA 50158**

**Appeal Number: 04A-UI-02990-RT
OC: 02-08-04 R: 02
Claimant: Respondent (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Temp Associates – Marshalltown, filed a timely appeal from an unemployment insurance decision dated March 8, 2004, reference 03, allowing unemployment insurance benefits to the claimant, Cory A. Shelton. After due notice was issued, a telephone hearing was held on April 12, 2004, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where he or any of his witnesses could be reached for the hearing, as instructed in the notice of appeal. Debra Upah, Manager of the Grinnell Office, participated in the hearing for the employer. The administrative law judge takes official notice of Iowa Workforce Development unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer from May 6, 2003 until he voluntarily quit on May 30, 2003. The employer is a temporary employment agency and the claimant was assigned to Wenco Windows from May 6, 2003 until May 23, 2003. At that time the employer notified the claimant that his assignment was completed and told him to check in. The claimant did so on May 30, 2003, and informed the employer that he was quitting. The claimant then completed an exit interview, as shown at Employer's Exhibit 1, indicating that he was quitting to take another job as a roofer. However, Workforce Development records show no earnings from any such employer. The only earnings that appear after his separation from the employer herein, are from Swift and Company in the fourth quarter of 2003 in the amount of \$156.40. The claimant does not appear, from Iowa Workforce Development records, to have requalified since his separation from the employer herein. There is also a disqualifying separation from a prior employer, Iowa Quality Beef, on April 2, 2003, but again, records do not show that he has requalified since working for Iowa Quality Beef. The claimant did not contact the employer herein from May 30, 2003 until he contacted the employer on February 11, 2004. The employer gave the claimant an assignment in March 2004, where he is still working. Pursuant to his claim for unemployment insurance benefits filed effective February 8, 2004, the claimant filed for two weeks, benefit weeks ending February 14 and 21, 2004 but received no benefits, being shown as a voluntary quit.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. He is not because he has received no benefits since separating from the employer herein.

871 IAC 24.25 provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer.

871 IAC 24.25(3) provides:

- (3) The claimant left to seek other employment but did not secure employment.

The administrative law judge concludes that the claimant left his employment voluntarily with the employer herein on May 30, 2003. Employer's Exhibit 1 establishes that the claimant quit and the testimony of the employer's witness, Debra Upah, Manager of the Grinnell Office, confirms this. It is true that the employer was a temporary employment agency and that the

claimant had satisfactorily completed his last assignment, but he did not seek reassignment within three working days, not contacting the employer until May 30, 2003, and at that time the claimant voluntarily quit, as shown at Employer's Exhibit 1. Ms. Upah testified that the employer would have attempted to place the claimant elsewhere but for the quit. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily. The issue then becomes whether the claimant left his employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with good cause attributable to the employer. See Iowa Code Section 96.6-2. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The claimant did not participate in the hearing and provide evidence of reasons attributable to the employer for his quit. Ms. Upah testified that the claimant quit because he informed them that he had another job as a roofer. However, Workforce Development records do not show any earnings from such a position. Leaving work voluntarily to seek other employment but not securing employment is not good cause attributable to the employer. The administrative law judge concludes further that Iowa Code Section 96.5-1-a does not apply here because there is no evidence that the claimant left his employment in good faith for the sole purpose of accepting other or better employment, which he did accept. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily without good cause attributable to the employer and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

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 administrative law judge concludes that the claimant has received no unemployment insurance benefits since separating from the employer herein on or about May 6, 2003 and filing for such benefits effective February 8, 2004. Since the claimant has received no unemployment insurance benefits, he is not overpaid any such benefits.

DECISION:

The representative's decision dated March 8, 2004, reference 03, is reversed. The claimant, Cory A. Shelton, is not entitled to receive unemployment insurance benefits until or unless he requalifies for such benefits because he left work voluntarily without good cause attributable to the employer. Because the claimant has received no unemployment insurance benefits he is not overpaid any such benefits.

b/b