

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH P STEPHENS
Claimant

APPEAL NO: 19A-UI-01321-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRADESMEN INTERNATIONAL LLC
Employer

OC: 01/06/19
Claimant: Respondent (4)

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.3(7) – Benefit Overpayment

STATEMENT OF THE CASE:

Tradesmen International LLC, filed a timely appeal from a representative's unemployment insurance decision dated February 8, 2019, (reference 01) which held claimant eligible to receive unemployment insurance benefits, finding that the claimant was employed for a specific job and worked until the completion of the job on April 19, 2018, which fulfilled the agreement. After due notice was provided, a telephone hearing was held on February 28, 2019. Claimant participated. Employer participated by Ms. Emily Kuhn, Recruiter and Mr. Eric Juates, Hearing Representative. The administrative file was identified and marked as Department Exhibit D-1 and admitted into the hearing record without objection.

ISSUES:

The first issue is whether Mr. Stephens quit employment with good cause attributable to the employer.

The second issue is whether Mr. Stephens has been overpaid unemployment insurance benefits.

The third issue is if Mr. Stephens has been overpaid unemployment insurance benefits, is he liable to repay the overpayment, or should the employer be chargeable based upon the employer's participation in the fact-finding interview.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Joseph Stephens began employment with the captioned employer, an employment service for construction craftsman on September 29, 2016. Mr. Stephens was seeking employment in the construction industry. Tradesmen International, LLC is an employment service that provides construction workers to client construction companies. At the time of hire, Mr. Stephens was informed that job assignments may take place within a sixty mile radius of Des Moines, Iowa. Mr. Stephens signed an agreement that within three working days after the completion of each work assignment, he would contact the company to establish his availability to be assigned to additional work assignments.

Mr. Stephens was initially assigned to work as a carpenter's helper at the Integrity Construction Company, a client of Tradesmen International, LLC. Mr. Stephens was assigned to work full-time and was paid by the hour. Mr. Stephens was informed by the superintendent of the Integrity job site that because work was slowing down, his final day of work at that company would be April 13, 2018. Tradesmen International, LLC was informed that the assignment at Integrity Construction Company was ending and contact was established. Mr. Stephens agreed that he would begin work at another client company's work location the next working day, Monday, April 16, 2018. Mr. Stephens was aware of the work, and agreed to the assignment and to the location of the construction site in Nevada, Iowa. Mr. Stephens reported for the work on Monday, April 16, 2018, at the new assignment with Central Iowa Builder Systems. He continued working until he did not report for work or notify his employer of his impending absences on Tuesday, April 24, Wednesday, April 25, and Thursday, April 26, 2018. On Friday, April 27, 2018, the claimant called and informed Tradesmen International that he had decided not to return to work for the company. Mr. Stephens stated that he had decided to enter into self-employment driving for Uber. Work continued to be available for Mr. Stephens at the time of his leaving.

Mr. Stephens agrees that continuing employment was available to him with Tradesmen International, LLC, but he left his employment with Tradesmen International, LLC because he had found self-employment closer to home and because he believed that Tradesmen International, LLC did not have the type of work opportunities that he was seeking.

REASONING AND CONCLUSIONS OF LAW:

An individual who leaves employment voluntarily is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code Section 96.5(1).

Iowa Code § 96.5-1 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.

Iowa Admin. Code r. 871-24.25(19) 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:

(19) The claimant left to enter self-employment.

In the case at hand, Mr. Stephens was employed by Tradesmen International, LLC, a company that provides temporary construction craftsman workers to client construction companies. The

company attempts to keep workers employed by the company busy working by promptly assigning them to new assignments as soon as a previous assignment is completed. Mr. Stephens did not go to Tradesmen International, LLC for the purpose of accepting just one assignment alone. Mr. Stephens registered with this employment service because he was looking for work, and work experience in a variety of construction jobs. Mr. Stephens entered an agreement to contact the company within three working days after completion of each job assignment so that Tradesmen was aware that he was available and wanted additional work.

When Tradesmen International, LLC was notified Mr. Stephens' assignment with Integrity Construction was coming to an end, Mr. Stephens was offered and accepted ongoing employment and reported the next working day, Monday, April 16, 2018. He agreed to the assignment location, and his work continued at the assignment until he stopped reporting for work on Tuesday, April 24, 2018 and thereafter. Mr. Stephens later notified Tradesmen International, LLC he had quit his job with the company because he had chosen to become self-employed in driving for Uber. The administrative law judge concludes that the claimant's employment with Tradesmen International, LLC ended on Tuesday, April 24, 2018 when the claimant stopped reporting for work, because he had quit.

While Mr. Stephens reasons for leaving employment may have been good cause reasons from his personal viewpoint, they were not good cause reasons that were attributable to the employer, thus disqualifying under the provisions of the Iowa Employment Security law.

Iowa Code § 96.5-1-g 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:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The administrative record reflects that subsequent to the claimant's leaving his employment with Tradesmen International, LLC, Mr. Stephens worked in and was paid wages for insured work equal to ten times his weekly benefits amount and therefore is not subject to a benefit disqualification.

DECISION:

The representative's unemployment insurance decision dated February 8, 2019, reference 01 is affirmed as modified. The portion of the determination allowing benefits is affirmed. The portion of the determination finding that claimant had worked until the completion of the job on April 19, 2018 was fulfilled the contract of employment is modified to find the claimant left employment without good cause attributable to the employer. At this time the claimant it is not subject to a benefit disqualification. Subsequent to the leaving, the claimant worked in and was paid wages for insured work equal to ten times his weekly benefit amount. The employer is not chargeable for benefits at this time.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn