

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN M PENNING
Claimant

APPEAL NO. 08A-UI-08286-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING INC
Employer

OC: 07/20/08 R: 04
Claimant: Respondent (2-R)

Section 96.5-1 - Voluntary Quit
Section 96.3-7 - Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated September 8, 2008, reference 01, that concluded the claimant was eligible for benefits because he had finished a temporary work assignment. A telephone hearing was held on October 1, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Colleen McGuinty participated in the hearing on behalf of the employer with a witness, Carrie Cannon.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?
Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. The claimant worked part-time on an assignment at Medical Associates Clinic from May 21, 2007, to June 30, 2008. When the claimant was hired, he signed a statement that he would be considered to have voluntarily quit employment if he did not contact the employer within three working days after the completion of a job assignment and request a new assignment.

When the claimant reported to work on June 26, 2008, he heard from coworkers that his employment would be ending on June 30. He called his supervisor at Medical Associates on June 27 who confirmed he was being laid off on June 30 and expressed surprise that the employer had not notified him yet. He then called the account manager with the employer, Carrie Cannon. Cannon told the claimant that his last day would be June 30 and verified that no one had contacted him before.

The claimant was upset that he was the last to know about his layoff and that employees at the clinic knew before he did. Once he had not received his paycheck on time due to miscommunication between the clinic and the employer regarding his hours. Consequently, the claimant decided he did not want to work for the employer any more. He informed Cannon that

he would not accept further assignments from the employer. He did not contact the employer after working on June 30 to obtain a new assignment.

The claimant filed for and received a total of \$636.00 in unemployment insurance benefits for the weeks between July 20 and September 13, 2008.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer.

Iowa Code § 96.5-1-j provides that individuals employed by a temporary agency must contact their employer within three working days after the completion of a work assignment and seek a new assignment or they will be considered to have voluntarily quit employment without good cause attributable to the employer, provided that the employer has given them a statement to read and sign that advises them of these requirements.

The claimant voluntarily quit employment under Iowa Code § 96.5-1-j because rather than seeking a new assignment with the employer, he informed the employer that he no longer wanted to work for the employer.

The next question is whether the claimant voluntarily quit employment without good cause attributable to the employer. While I understand the claimant was frustrated and embarrassed by the short notice given to him about the ending of his employment and that he learned about it from coworkers, the employer had not promised the claimant any certain amount of notice of an assignment ending. Furthermore, the evidence does not show anyone with the employer deliberately failed to notify him to embarrass him or mistreat him. Even when considered in light of the time when the employer paid the claimant late, I cannot conclude the employer deliberately breached the employment agreement, which would establish good cause under 871 IAC 24.26(1) or created intolerable or detrimental working conditions which would establish good cause under 871 IAC 24.26(4). The claimant can lift this disqualification by showing that he was paid at least \$890.00 in wages after June 30, 2008.

The unemployment insurance rules at 871 IAC 24.27 indicate that the claimant who leaves part time employment may be eligible for benefits if he has sufficient wages from other employers to meet the wage requirements of Iowa Code § 96.4-4. The claimant does not have enough wages from other employers during his base period from April 1, 2007, to March 31, 2008, because he does not meet the minimum requirement of having at least \$1,240.00 in his high quarter of wages.

The unemployment insurance law requires benefits to 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. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated September 8, 2008, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css