

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

DANNY R RAMSEY
532 S 16TH ST
FORT DODGE IA 50501

SPHERION ATLANTIC WORKFORCE LLC
C/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-05487-RT
OC: 04-04-04 R: 01
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 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Spherion Atlantic Workforce LLC, filed a timely appeal from an unemployment insurance decision dated May 4, 2004, reference 01, allowing unemployment insurance benefits to the claimant, Danny R. Ramsey. After due notice was issued, a telephone hearing was held on July 2, 2004 with the claimant not participating. Although the claimant had called in a telephone number where he purportedly could be reached for the hearing, when the administrative law judge called that number at 9:01 a.m., the claimant was not at that number. The person who answered the phone indicated that the claimant did live there but he was not there at the time. The administrative law judge left a message that he was going to proceed

with the hearing and if the claimant wanted to participate he needed to call before the hearing was over and the record was closed. The administrative law judge provided an "800" number for the claimant to use. The hearing began when the record was opened at 9:04 a.m. and ended when the record was closed at 9:18 a.m. and the claimant had not called during that time. Stacy Anderson, Office Manager in the employer's Fort Dodge, Iowa, office, participated in the hearing for the employer. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

A hearing in this matter was originally scheduled for June 8, 2004 at 11:00 a.m. and rescheduled at the employer's request. The administrative law judge contacted the claimant and informed him of the postponement and that the hearing would be rescheduled and a new notice would be sent. The claimant understood this. The employer contacted the administrative law judge again on June 29, 2004 at 11:54 a.m. and asked for a second postponement and rescheduling. The administrative law judge denied this request because it was the second such request from the employer and the employer's witness could be available for the hearing at another telephone number. The employer's witness was available and participated in the hearing.

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 first employed by the employer on October 10, 2003. The employer is a temporary employment agency. The most recent assignment for the claimant was to Seneca Foundry which began on December 1, 2003. This assignment was a temporary-to-hire position with no closing date. However, the claimant did not satisfactorily complete that assignment. On January 12, 2004, the claimant was absent for personal illness. The employer's policy requires that an employee call both the employer and the assignee, two hours before the employee's shift is to start, if that employee is going to be absent or tardy. The employee must call himself or herself. On this occasion the claimant's girlfriend called and spoke to the employer's witness, Stacy Anderson, Office Manager. She informed the girlfriend that the claimant himself needed to call. She asked the girlfriend if she could speak to the claimant. She then spoke to the claimant. The claimant informed her that he was ill and would not be at work that day. Ms. Anderson told the claimant that he was needed at work the next day and if he could not attend he would have to call again. The claimant did not show up for work the next day, January 13, 2004 or thereafter and did not inform the employer or the assignee. The claimant was absent as a no-call/no-show from and after January 13, 2004. The employer has another policy that provides that two consecutive absences as a no-call/no-show is treated as a voluntary quit and the employee is terminated. The claimant was then terminated as a voluntary quit on January 14, 2004. The employer has not heard from the claimant since.

During the phone conversation between Ms. Anderson and the claimant on January 12, 2004, Ms. Anderson did not tell the claimant that he would be replaced and never informed the claimant that he was fired or discharged but told him that he needed to be at work the next day and if he could not make it he had to call. The claimant never expressed any concerns to Ms. Anderson about his working conditions either with the employer or the assignee nor did he do so to anyone else that Ms. Anderson heard about. The claimant also did not indicate or announce an intention to quit to Ms. Anderson if any problems he was having were not addressed either by the employer or the assignee nor did he do so to anyone else that Ms. Anderson heard about. If the claimant had shown up for work on January 13, 2004 or properly reported an absence, work would have remained available for him.

Pursuant to his claim for unemployment insurance benefits filed effective April 4, 2004, the claimant has received unemployment insurance benefits in the amount of \$2,597.46 as follows: \$252.00 per week for ten weeks from benefit week ending April 10, 2004 to benefit week ending June 12, 2004 and \$77.46 for benefit week ending June 19, 2004. This exhausted the claimant's unemployment insurance benefits for the current benefit year.

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.

Iowa Code Section 96.5-1 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.

871 IAC 24.25(4), (21), (28) 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.

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

(21) The claimant left because of dissatisfaction with the work environment.

(28) The claimant left after being reprimanded.

The first issue to be resolved is the character of the separation. The employer maintains that the claimant left his employment voluntarily when he quit showing up for work and did not inform the employer of the reason. The claimant seems to maintain that he was discharged when he spoke to the employer on or about January 12, 2004. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant left his employment voluntarily. The employer's witness, Stacy Anderson, Office Manager in the employer's Fort Dodge, Iowa, location, credibly testified that after speaking to the claimant on January 12, 2004 about his absences, the claimant never returned to work and never notified either the employer or the employer's assignee, Seneca Foundry. Ms. Anderson also credibly testified that when she spoke with the claimant on

January 12, 2004, she did not tell the claimant that the employer was going to replace him and further did not tell the claimant that he was discharged or fired. Rather, Ms. Anderson credibly testified that she told the claimant that he was needed at work the next day at Seneca Foundry and that if he could not be at work he needed to appropriately call. The claimant did not show up for work at Seneca Foundry thereafter. The employer has never heard from the claimant since. The employer's policy provides for voluntary quit upon two consecutive absences as a no-call/no-show. The rule noted above provides for three such absences. The administrative law judge notes that the claimant never returned to work after January 12, 2004 and never informed the employer and therefore had even more than three absences as a no-call/no-show. Further, the administrative law judge concludes that by failing to return to work and not notifying either the employer or the assignee, the claimant both demonstrated an intention to terminate the employment relationship and performed an overt act to carry out that intention as required for a voluntary quit by Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). Accordingly, the administrative law judge concludes that the claimant voluntarily left his employment effective January 14, 2004. 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 the employer herein 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. Anderson credibly testified that the claimant simply quit coming to work. Leaving work voluntarily when one is absent for three days without giving notice to the employer in violation of the employer's rule is not good cause attributable to the employer. Leaving work because of dissatisfaction with the work environment is also not good cause attributable to the employer. There is some evidence that the claimant received a reprimand for his attendance on January 12, 2004 but leaving work voluntarily after being reprimanded is also not good cause attributable to the employer. There is no evidence that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental or that he was subjected to a substantial change in his contract of hire. There is also no evidence that the claimant ever expressed any concerns to the employer about his working conditions or that he ever indicated or announced an intention to quit if any of his concerns were not addressed by the employer.

Accordingly, and for all the reasons set out above, 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 unemployment insurance benefits in the amount of \$2,597.46 since separating from the employer herein on or about January 14, 2004 and filing for such benefits effective April 4, 2004, to which he is not entitled and for which he is overpaid. The administrative law judge further concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of May 4, 2004, reference 01, is reversed. The claimant, Danny R. Ramsey, 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. The claimant is overpaid unemployment insurance benefits in the amount of \$2,597.46.

tjc/b