

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAMIEN X MAPP**  
Claimant

**APPEAL NO. 13A-UI-04204-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE SERVICES INC**  
Employer

**OC: 03/17/13**  
**Claimant: Respondent (2-R)**

Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the April 5, 2013, reference 02, decision that allowed benefits in connection with a September 25, 2012 separation. After due notice was issued, a hearing was held on May 9, 2013. Claimant Damien Mapp participated. Michael Payne, Risk Management Specialist, represented the employer.

**ISSUE:**

Whether Mr. Mapp separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency. Damien Mapp began getting work through Advance Services, Inc., in 2009 and last performed work for the employer in a full-time, temporary work assignment at Pioneer Hybrid in Boone. The assignment started on July 9, 2012. The work hours were 8:00 a.m. to 5:00 p.m., Monday through Saturday. Advance Services Representative Brie Van Sickle placed Mr. Mapp in the assignment. Ms. Van Sickle works in the employer's Ames office. Mr. Mapp last performed work in the Pioneer Hybrid assignment on Tuesday, September 25, 2012. Thereafter, Mr. Mapp was absent without notifying the employer on September 26, 27 and 28. The employer's payroll records document Mr. Mapp working just 16 hours during the work week that started September 24, 2012, which would correspond with Mr. Mapp working just two full days that week.

The employer's written policy indicated that if an employee were absent for three days without notifying the employer, the employee would be deemed to have voluntarily quit and could not be considered for further assignments for 90 days. Mr. Mapp had been provided with a copy of and had acknowledged the work rules on multiple occasions during his long relationship with Advance Services, Inc. On September 28, Ms. Van Sickle contacted Mr. Mapp about his

absence from the assignment and told Mr. Mapp that the employer deemed him to have voluntarily quit. Mr. Mapp inquired about additional work. Ms. Van Sickle told Mr. Mapp that he was barred from further work for the employer for 90 days, due to the failure to complete an assignment.

#### **REASONING AND CONCLUSIONS OF LAW:**

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

When an employee is absent three days in violation of company policy, the employee is presumed to have voluntarily quit without good cause attributable to the employer. See 871 IAC 24.25(4).

The administrative law judge found the employer's testimony more credible and reliable than the testimony provided by Mr. Mapp. The employer testified from work records and payroll records created contemporaneously with the incidents involved. Mr. Mapp's testimony about the amount of work he missed, the reason for the absence, and the notice he allegedly gave to the employer concerning the need to be the absence is not credible. Mr. Mapp's testimony on those matters does not comport with how the relevant court proceedings he refers to would have been handled. The administrative law judge says this with the experience of working as a Public Defender in Story County for five years prior to becoming an administrative law judge. In short, the administrative law judge concludes that much of Mr. Mapp's testimony was a convenient fabrication months after the events in question. The weight of the evidence indicates that Mr. Mapp was indeed absent three days without notifying the employer in violation of the employer's policy.

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Mr. Mapp voluntarily quit the employment, effective without good cause attributable to the employer. Accordingly, Mr. Mapp is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Mapp.

Iowa Code section 96.3(7) provides that benefits must 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. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of the amount of the overpayment and whether the claimant will have to repay the overpaid benefits.

Mr. Mapp's driving privilege problems call into question whether he has been available for work within the meaning of law since he separated from this employment in September 2012. Mr. Mapp testified that he had to appear for court in September 2012 in a matter relating to a Driving Under Suspension charge. Mr. Mapp testified that that prosecution is still ongoing. This matter will be remanded to the Claims Division for adjudication of the claimant's availability. That adjudication should take into consideration the status of the claimant's driving privileges, including a review of any available court or Department of Transportation records.

**DECISION:**

The Agency representative's April 5, 2013, reference 02, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer effective September 25, 2012. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

This matter is remanded to the Claims Division for determination of the amount of the overpayment and whether the claimant will have to repay the overpaid benefits.

This matter is remanded to the Claims Division for adjudication of the claimant's availability for work.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs