

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBERT D HOUSKEN**  
Claimant

**APPEAL NO. 13A-UI-06629-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**QPS EMPLOYMENT GROUP INC**  
Employer

**OC: 10/07/12**  
**Claimant: Appellant (2)**

Iowa Code Section 96.5(1)(j) – Separation From Temporary Employment

**STATEMENT OF THE CASE:**

Robert Housken filed a timely appeal from the May 24, 2013, reference 02, decision that denied benefits in connection with a May 1, 2013 separation. After due notice was issued, a hearing was held on July 11, 2013. Mr. Housken participated. Rocio Serna represented the employer and presented additional testimony through Lynn Patterson.

**ISSUE:**

Whether the claimant's separation from the temporary employment agency on or about May 1, 2013 was for good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: QPS Employment Group, Inc., is a temporary employment agency. Robert Housken began to get work through QPS in May 2012 after QPS took over the temporary employment contract at the Land O' Lakes plant where he had previously worked in temporary work assignments through another agency. In January 2013, Mr. Housken started his third QPS temporary employment work assignment at Land O' Lakes. Mr. Housken completed the assignment on April 26, 2013. Mr. Housken next made contact with QPS on June 24, 2013.

On May 21, 2012, QPS had Mr. Housken sign a 3-Day Reassignment Policy that stated as follows:

Once you complete an assignment with a client, it is your duty to contact QPS for reassignment within three (3) working days as required by Iowa Code section 96.5-1-j. Failure to report within three (3) days for reassignment or to accept a new job assignment offered without reasonable cause will indicate that you have refused available work and quit working for QPS Employment Group.

The documented further stated: "My signature below means that I understand and received a copy of the above policy." Mr. Housken did not receive a copy of the document he signed.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1-j 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, but the individual shall not be disqualified if the department finds that:

j. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.

To show that the employee was advised in writing of the notification requirement of this paragraph, the temporary employment firm shall advise the temporary employee by requiring the temporary employee, at the time of employment with the temporary employment firm, to read and sign a document that provides a clear and concise explanation of the notification requirement and the consequences of a failure to notify. The document shall be separate from any contract of employment and a copy of the signed document shall be provided to the temporary employee.

For the purposes of this paragraph:

(1) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their work force during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(2) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

871 IAC 24.26(19) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits

that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

The employer's 3-Day Reassignment Policy fails to comply with the requirements on the statute. The policy was silent on the consequences that would flow from Mr. Housken's failure to contact QPS for a new assignment within three working days of completion of an assignment. The statute requires that the temporary employment agency tell the employee in the policy statement document that failure to contact the temporary employment agency within in three working days of the end of an assignment will result in the employee being disqualified for unemployment insurance benefits. That is the consequence referred to in the statute. The employer omitted what was arguably the most important element of the notice required by the statute when the employer drafted its policy. Absent the notice required by the statute, the employer cannot invoke the benefit of the statute to disqualify the claimant for benefits or to escape liability for benefits. In the absence of a complying policy statement, Mr. Housken fulfilled his contract of hire when he completed the assignment at Land O'Lakes and was under no obligation to seek further assignments through QPS.

The administrative law judge also notes that the employer presented insufficient evidence, and insufficiently direct and satisfactory evidence, to rebut Mr. Housken's assertion that he did not receive a copy of the policy document he signed. This, too, is a defect, that would prevent the employer from invoking the benefit of the statute.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Housken's separation from the temporary employment agency, April 26, 2013, not May 1, 2013, was for good cause attributable to the temporary employment agency. Mr. Housken is eligible for benefits provided she is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Housken.

**DECISION:**

The Agency representative's May 24, 2013, reference 02, decision is reversed. The claimant's April 26, 2013 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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