

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TODD A DUTCHER

Claimant

APPEAL NO. 12A-UI-02259-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MASTERSON PERSONNEL INC

Employer

OC: 01/01/12

Claimant: Appellant (2)

Section 96.5-1 – Voluntary Quit

Section 96.5-1-j – Request for Reassignment Temporary Employment

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated February 28, 2012, reference 01, which held that the claimant was not eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 21, 2012. Claimant participated. The employer participated by Jim Robertson, the unemployment operations manager, and Amanda Peterson, a recruiter in Mason City, Iowa. The record consists of the testimony of Todd Dutcher; the testimony of Jim Robertson; the testimony of Amanda Peterson; and Employer's Exhibit 1..

ISSUE:

Did the claimant request another assignment after the end of assignment within three working days after December 16, 2011.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a temporary employment agency. The claimant was given an assignment on August 2, 2011, to work at Iowa Mold & Tool in Garner, Iowa. The job was a full-time job. The claimant's assignment ended on December 16, 2011. The claimant was notified by voice mail on December 16, 2011.

On December 19, 2011, the claimant called Pat Walker, a recruiter in the Mason City, Iowa, office, to ask about his check and to inquire whether any other work was available. No other work was available. The claimant looked for work elsewhere. He did stop by the office on February 16, 2012, to indicate that he was available and has dropped off a résumé.

The claimant signed a written separate form where he acknowledged that he was required to request reassignment within three working days after the end of an assignment. If he failed to do so, he would be considered to have voluntarily quit his job. (Exhibit 1)

REASONING AND CONCLUSIONS OF LAW:

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.

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.

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.

In this case, the evidence showed that the claimant's assignment came to an end on December 16, 2011. The claimant testified that he spoke to Ms. Peterson about the end of his assignment and a request for a new assignment. Ms. Peterson testified that she did not speak to the claimant but left him a voice mail. Ms. Peterson said that if she had spoken to the claimant, she would have made a note in the file. There was no note in the file.

The claimant also said he spoke to Pat Walker, another recruiter, on December 19, 2011. He asked Mr. Walker about his paycheck and whether there was anything available. Mr. Walker did not testify at the hearing. There is no note in the file from Mr. Walker.

The employer's evidence on whether the claimant spoke to Mr. Walker is hearsay whereas the claimant testified that he did speak to Mr. Walker. The claimant testified that he was diligently seeking work and therefore it is entirely possible that he did speak to Mr. Walker. The administrative law judge cannot weigh the claimant's testimony against the testimony of Mr. Walker since Mr. Walker did not testify at the hearing. The claimant's testimony that he did speak to Mr. Walker on December 19, 2011, is accepted. Since the claimant did notify the employer within three working days of the end of the assignment that he wanted another assignment, he is not a voluntary quit. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated February 28, 2012, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css