

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAUL A MARTINEZ

Claimant

APPEAL NO. 11A-UI-01420-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LABOR READY MIDWEST INC

Employer

OC: 12/19/10

Claimant: Respondent (5)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 25, 2011, reference 01, decision that allowed benefits in connection with a December 20, 2010 separation. After due notice was issued, a hearing was held on March 7, 2011. Claimant did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Michael Nicolosi represented the employer. Exhibits One and Two were received into evidence.

ISSUE:

Whether the claimant's separation from the temporary employment agency 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: The employer is a temporary employment agency. In December 2010, Raul Martinez returned to perform day-labor for Labor Ready and was assigned to Country Stone and Soil. The claimant last performed a day-labor assignment on Monday, December 20, 2010. On December 21, the claimant notified the employer he was not available for a day-labor assignment that day. On December 22, when the claimant did not appear for a day-labor assignment, the temporary employment agency contacted him and the claimant said he could not perform work in a day-labor assignment that day because he had an interview at Menards. There was no further contact between the claimant and the temporary employment agency.

The employer had the claimant execute a document captioned Iowa Addendum, Acknowledgement Form State of Iowa Unemployment Law. The document is a full page of single-spaced text. The document states a requirement that the claimant contact the employer within three days of the completion of an assignment to seek a new assignment. The bulk of the page is a partial copy of the Iowa Code section 96.5(1)(j). The employer did not provide the claimant with a copy of this document. The employer's end of assignment policy is also set forth on either the front or last page of the application.

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 full page single-spaced document the employer executed with the claimant does not meet the statutory requirement for "a clear and concise explanation of the notification requirement and the consequences of a failure to notify." Even if the Acknowledgment Form had met the requirements of the statute, the employer did not provide the claimant with a copy of the document the employer had him sign. The employer has failed to comply with the requirements of Iowa Code section 96.5(1)(j) and therefore cannot claim the benefit of that statute to disqualify the claimant for benefits. Because the statute does not apply, the claimant completed his obligation to the employer at the end of each day-labor assignment and had no further obligation to seek employment through the temporary employment agency.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that the claimant's 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.

DECISION:

The Agency representative's January 25, 2011, reference 01, decision is modified as follows. The employer did not fulfill the requirements of Iowa Code section 96.5(1)(j) and the statute therefore does not apply. The claimant fulfilled his obligation to the employer when he completed his day-labor assignment on December 20, 2010. The claimant's 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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