IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JULIE A NORTHUP
Claimant

ALL IN A DAY LLC
Employer

APPEAL NO. 17A-UI-00737-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/18/16
Claimant: Respondent (1)

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

Iowa Admin. Code rule 871-24.26(19) – Fulfillment of the Contract of Hire

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 12, 2017, reference 04, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on the claims deputy's conclusion that the claimant completed a temporary employment work assignment on December 16, 2016 and notified the temporary employment firm within three working days of completing the assignment. After due notice was issued, a hearing was held on February 10, 2017. Claimant Julie Northup participated. Tony Holguin represented the employer and presented additional testimony through Molly Newquist. Exhibits 1 through 7 were received into evidence. The administrative law judge took official notice of the agency's administrative record of benefits disbursed to the claimant.

ISSUES:

Whether the claimant completed her temporary employment work assignment.

Whether the claimant's December 2016 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: All in a Day, L.L.C/Aventure Staffing (Aventure) is a temporary employment agency. Julie Northup began her employment with Aventure in October 2016 and performed work in a single, full-time temporary work assignment at Montezuma Manufacturing in Montezuma. Ms. Northup lives in Belle Plaine and commuted approximately 33 miles to the work assignment. Ms. Northup began the assignment on the evening of October 13, 2016. Ms. Northup's work hours in the assignment were 11:30 p.m. to 7:30 a.m., Sunday evening through Friday morning.

At the time Ms. Northup began her employment, Aventure Onsite Representative Molly Newquist had Ms. Northup sign a number for onboarding documents. However, Aventure did

not provide Ms. Northup with a copy of each document she signed. One of the documents, Aventure had Ms. Northup sign was an Employee Agreement, which stated as follows:

> I understand I must contact Aventure Staffing & Professional Services, LLC / All In A Day Staffing within three (3) business days of completion of each employment assignment to request additional work. My failure to contact Aventure Staffing office indicates that I am not available for work and will be deemed a voluntary quit. This will lead to inactivation and may lead to unemployment ineligibility.

The Employee Agreement was presented to Ms. Northup as a stand-alone policy document. Aventure did not provide Ms. Northup with a copy the document.

A similar policy statement appeared in Aventure's Policies and Procedures Checklist, which listed nine policy statements. Ms. Northup had to initial each policy statement and then sign her acknowledgment of the entire policy document at the bottom of the document. The employer provided Ms. Northup with a copy of the Policies and Procedures Checklist.

A less complete statement of the end-of-assignment policy appeared in a job assignment Aventure had Ms. Northup sign. That document provided Ms. Northup's work hours, her pay rate, information regarding when she would be paid and the following statement regarding the end of the assignment:

> Once your assignment has ended, it is your responsibility to contact our office within 3 business days to request additional work. Failure to contact our office may lead to unemployment insurance ineligibility.

That policy statement omitted any reference to failure to make contact at the end of an assignment being deemed a voluntary quit. The employer provided Ms. Northup with a copy of the job assignment document.

The employer asserts that Ms. Northup voluntarily quit the employment by failing to complete the assignment. At the time Ms. Northup began her employment, Aventure provided her with an employee handbook and had her sign a handbook acknowledgment form. Page 5 of the handbook contained a longer policy statement regarding voluntary quits. The policy statement regarding actions the employer would deem a voluntary quit included reference to failure to complete an assignment. The policy statements also referenced making weekly calls, inactivation of employee status, failure to call in daily, and walking off the job.

On December 12, 2016, Ms. Newquist received notice from Montezuma Manufacturing that the company wanted Aventure employees' assignments to end on December 19, 2016. Ms. Newquist had previously told Ms. Northup and other Aventure employees that the assignment would end around December 16, 2016. On December 12, Ms. Newquist posted notice the December 19, 2016 assignment end date at four locations within the plant. Ms. Newquist posted the notice at both time clock locations, at the main employee entrance, and on a notice board next to the employee restrooms.

On December 14, Ms. Newquist presided over a meeting of Aventure employees at the Montezuma Manufacturing plant to address the process of winding down the assignments at Montezuma Manufacturing. Ms. Newquist incorporated a PowerPoint presentation that began with notice that the last day in the assignments would be December 19. Ms. Newquist's PowerPoint presentation instructed Aventure employees to call Aventure's Grinnell office *after* December 19 and *by* December 22 to request additional work. Ms. Northup was not present for

this meeting. Ms. Northup's 14-year-old daughter had been injured in an ATV accident and Ms. Northup had to miss the meeting to attend to her daughter's medical needs.

Ms. Northup did not work through the December 19, 2016 assignment completion date. This was because Ms. Northup had continued under the belief that the assignment would end on December 16. Ms. Northup had not noticed the signs indicating that the assignment end date had been set at December 19. Ms. Northup last performed work in the Montezuma Manufacturing assignment on the shift that began the evening of Thursday, December 15 and that ended on the morning of Friday, December 16, 2016. At that point, Ms. Northup believed she had completed the assignment. In the days leading up to the December 16, Ms. Northup and Ms. Newquist discussed Ms. Northup's interest in further assignments and the fact that any additional work the employer might have for Ms. Northup would involve a longer commute. During these discussions, the subject of the assignment end date being set at December 19 never came up.

On Monday, December 19, Ms. Northup contacted the employer's office in Grinnell to make contact with Ms. Newquist to see whether the employer had any assignments that would not involve a commute longer than the commute to Montezuma. Ms. Northup left a message for Ms. Newquist, who was not at the Grinnell office. Ms. Newquist was not due to be at the Grinnell office until December 20 and was still at Montezuma Manufacturing on December 19.

Ms. Northup established an original claim for unemployment insurance benefits that was deemed effective December 18, 2017. Ms. Northup has received $4,122.00 in benefits for the nine-week period of December 18, 2016 through February 18, 2017. Ms. Northup's base period for purposes of the December 18, 2016 claim consists of the third and fourth quarters of 2015 and the first and second quarters of 2016. All In A Day/Aventure is not one of Ms. Northup's base period employers and, therefore, has not been charged for benefits paid to Ms. Northup.

On January 11, 2017, a Workforce Development Claims Deputy held a fact-finding interview to address Ms. Northup's December 2016 separation from All In a Day/Aventure. Human Resources Specialist Tony Holguin represented All In A Day/Aventure at the fact-finding interview and provided a statement to the claims deputy.

REASONING AND CONCLUSIONS OF LAW:

In considering an understanding or belief formed, or a conclusion drawn, by an employer or claimant, the administrative law judge considers what a reasonable person would have concluded under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993).

The weight of the evidence establishes that a miscommunication and lack of communication led Ms. Northup to reasonable conclude that she had completed the assignment on December 16, 2016. The employer representative had previously referenced that date as the end date in discussion for which Ms. Northup was present. Ms. Northup was not present for the employer representative's announcement that the end date had been amended to December 19. The employer representative knew or should have known that Ms. Northup was not present for the meeting when the December 19 end date was announced. The employer representative made no contact with Ms. Northup to ensure that Ms. Northup was aware that the assignment end date had been adjusted to December 19. The postings were there to remind employees who had been present for the December 14 meeting of the December 19 end date discussed at that meeting. Ms. Northup had no reason to note the postings and did not note the postings.

Iowa Code § 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. (1) 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.
>
> (2) 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.
>
> (3) For the purposes of this paragraph:
>
> (a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.
>
> (b) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

Iowa Admin. Code r. 871-24.26(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 took a belt-and-suspenders approach to providing notice of the need to contact that employer within three days of the end of an assignment to request additional work, but failed to comply with a basic and important requirement set forth in the statute. That requirement was that the employer have Ms. Northup sign the clear and concise statement of the policy set forth on a separate document *and then provide her with a copy of that document*. Why the employer provided Ms. Northup with a copy of every other document but the most important one is a mystery. Because the employer did not comply with the notice requirement set forth in the statute, the employer cannot now use the statute to argue that Ms. Northup should be disqualified for benefits. Ms. Northup fulfilled her contract of hire when she reasonably concluded she had completed the assignment. In any event, the weight of the evidence establishes that Ms. Northup did indeed contact the employer's Grinnell office on Monday, December 19 to continue the discussion with Ms. Newquist regarding additional work. The employer presented no testimony from Grinnell office staff to refute Ms. Newquist's credible testimony that she made contact with the Grinnell office on December 19. The contact with the Grinnell office was within three working days of the date that Ms. Northup reasonably concluded she had completed the assignment.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Northup's December 2016 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Ms. Northup is eligible for benefits provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Northup. As noted above, the employer is not a base period employer for purposes of the claim year that began on December 18, 2016 and that will end on December 16, 2017. Accordingly, the employer's account will not be assessed for benefits paid to the claimant during the current claim year, but may be assessed in connection with benefits paid to Ms. Northup in connection with a new claim year effective on or after December 17, 2017.

DECISION:

The January 12, 2017, reference 04, decision is affirmed. The claimant's December 2016 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The claimant is eligible for benefits provided she is otherwise eligible. The employer's account may be charged as outlined above.

_____
James E. Timberland
Administrative Law Judge

_____
Decision Dated and Mailed

jet/rvs