

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TIMMY A BROOKS**

Claimant

**APPEAL NO. 08A-UI-00559-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LABOR READY MIDWEST INC**

Employer

**OC: 11/25/07 R: 01  
Claimant: Respondent (1)**

871 IAC 24.26(19) – Separation from Temporary Employment Agency

**STATEMENT OF THE CASE:**

Labor Ready Midwest, Inc., filed a timely appeal from the January 7, 2008, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on January 31, 2008. Claimant Timmy Brooks participated. Mike Schmith, Sioux City Branch Manager, represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One and Two into the record.

**ISSUE:**

Whether the claimant's separation from the temporary employment agency on or about December 8, 2007, 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: Timmy Brooks established his employment relationship with Labor Read Midwest, Inc., on April 19, 2004 and had worked in many assignments. The employer supplies day-labor to client businesses and places employees in day-labor assignments. On December 3-4, Mr. Brooks completed an assignment at a cold-storage facility. On December 6, Mr. Brooks reported to Labor Ready Midwest to notify the temporary employment agency that he was available for a new assignment. Labor Ready placed Mr. Brooks in a one-day assignment that Mr. Brooks completed on December 10. On December 11, Mr. Brooks notified Labor Ready that he was available for a new assignment, but the employer did not have an assignment available. On December 13, Mr. Brooks again reported to Labor Ready to indicate he was available for a new assignment. The employer placed Mr. Brooks in a one-day assignment that Mr. Brooks completed on December 15 and placed Mr. Brooks in another one-day assignment that Mr. Brooks completed on December 17. On December 19, Mr. Brooks went to Labor Ready to indicate that he was available for a new assignment, but the employer did not have an assignment available. On December 26 or 27, Mr. Brooks went to Labor Ready to indicate he was available for a new assignment. The employer placed Mr. Brooks in a one-day assignment that Mr. Brooks completed on December 28, 2007. Mr. Brooks continued to report to Labor Ready two times per week. On January 22, Mr. Brooks completed a three-hour assignment. On January 24, Mr. Brooks completed two partial-day assignments.

At the same time, Mr. Brooks was seeking day-labor assignments with Labor Ready, Mr. Brooks was engaged in the search for full-time employment required by Iowa Code section 96.4(3).

At the time Mr. Brooks commenced his employment relationship, and again on January 5, 2006, Mr. Brooks signed an application for employment that contained the following language:

At the end of the work day, I will be deemed to have quit until I next begin working another job assignment. Failure to register my availability for work may affect my eligibility for unemployment compensation. I understand that merely registering my availability for work does not constitute employment, and I am not employed until I actually begin working a job assignment. I understand that after receiving a job assignment, I am free to leave the branch office and do as I wish until the job assignment starts. I understand that I will not be paid for time spent at a Labor Ready branch office after receiving a job assignment or for time commuting to the customer's job site. I understand the importance of never being late for a job assignment.

#### **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 lacks an end-of-assignment notification policy that complies with the requirements of Iowa Code section 96.5(1)(j) and, therefore, the statute does not apply to Mr. Brooks' employment. The evidence in the record establishes that throughout December 2007 and January 2008, Mr. Brooks has completed all of the day assignments in which he has been placed. Mr. Brooks' election not to return to the employer for an additional assignment at any given point would not disqualify him for unemployment insurance benefits. Mr. Brooks continues to be eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Brooks.

**DECISION:**

The Agency representative's January 7, 2008, reference 02, decision is affirmed. 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/css