

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BROCK P WARRICK
Claimant

AEROTEK INC
Employer

APPEAL 19A-UI-03437-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/15/18
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

On April 25, 2019, the employer filed an appeal from the April 15, 2019, (reference 06) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 14, 2019. At the time of the hearing the parties waived notice on Iowa Code § 96.5(1)j, which involves separation from temporary employment. Claimant participated and testified. Employer participated through Recruiter Lead Katie Hannah.

ISSUES:

Was the claimant discharged from the temporary assignment for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits or did he quit by not reporting for additional work assignments within three business days of the end of the last assignment?

Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a temporary employee. Claimant was last assigned to work as an operator at Seed Energy. That assignment began on October 10, 2018 and ended on March 16, 2019 when he was separated from the assignment, but not the employment. Claimant's assignment ended at the request of the client.

On March 17, 2019, the employer, through Stephanie Wilkerson, contacted the claimant to advise him not to return to the assignment. The two did not discuss the possibility of a new assignment, but claimant assumed if one were available Wilkerson would tell him about it. On March 19, 2019, claimant spoke with Hannah. It came up, during their conversation, that

claimant was considering relocating. Hannah assumed this meant claimant was not looking for additional assignments and therefore did not present him with any possible new assignments. Hannah did not explicitly confirm with claimant that he was definitely relocating or not interested in a new assignment. Claimant again assumed that if work were available the employer would notify him. The employer does not have a policy which requires their employees to provide any notice or take any action when an assignment ends.

The claimant filed a new claim for unemployment insurance benefits with an effective date of July 15, 2018 and an additional date of March 17, 2019. The claimant filed for and received a total of \$3,141.00 in unemployment insurance benefits for the weeks between March 17 and May 4, 2019. The employer did not participate in a fact finding interview regarding the separation on April 12, 2019. The fact finder determined claimant qualified for benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation was with good cause attributable to the employer.

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 lettered paragraph:

(a) "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.

(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 § 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 § 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 does not have a policy that addresses the specific terms of Iowa Code § 96.5(1)j. Furthermore, the purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for and seeking work at the end of the temporary assignment. Claimant was notified by the employer that his assignment had ended. He assumed when that notification was made the employer would have advised him if other work was available. While claimant did mention he was considering relocating, the employer did not follow up with claimant to confirm that his statement meant he was not looking for additional work. Rather, the employer made an assumption and did not pursue other assignments for the claimant. Since he contacted the employer within three working days of the notification of the end of the assignment, requested reassignment, and there was no work available, no disqualification is imposed. As benefits are allowed, the issues of overpayment and participation are moot.

DECISION:

The April 15, 2019, (reference 06) unemployment insurance decision is affirmed. The claimant's separation from employment was attributable to the employer. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid. The issues of overpayment and participation are moot.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs