

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BRANDON M CINKAN**  
Claimant

**ELS OF FLORIDA INC**  
Employer

**APPEAL 21A-UI-25310-JC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/21/21**  
**Claimant: Respondent (2R)**

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Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment  
Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview  
PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation (FPUC)

**STATEMENT OF THE CASE:**

The employer/appellant, ELS of Florida Inc., filed an appeal from the November 3, 2021 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 12, 2022. The claimant/respondent, Brandon M. Cinkan, did not participate. The employer participated through Jim Clyde.

The administrative law judge took official notice of the administrative records. Employer Exhibit 1 was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Did the claimant quit by not reporting for an additional work assignment within three business days of the end of the last assignment?  
Was the claimant discharged for disqualifying job-related misconduct?  
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?  
Is the claimant eligible for Federal Pandemic Unemployment Compensation?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a temporary staffing firm. The claimant worked on assignment from September 17, 2019 until March 9, 2020, when the assignment, but not the employment ended.

When claimant was hired, he was trained and signed off on the employer's reassignment policy, which requires an employee contact the employer within three business days of an assignment ending to request new assignment. (See Employer Exhibit 1). Employer documents its contacts with employees within its internal database. The claimant did not request a new assignment or contact the employer again.

Employer attempted to contact claimant on March 10, 2020, April 9, 2020 and April 13, 2020. Claimant later accepted a position but never showed up to start on April 21, 2020.

The administrative record reflects that claimant originally applied for unemployment insurance benefits with an effective date March 22, 2020 and received benefits. Claimant's March 9, 2020 separation was not applied to his March 22, 2020 claim, but rather his March 21, 2021 claim year. For the March 21, 2021 claim year, claimant has not been paid any benefits.

The employer did not participate in the November 2, 2021 initial fact-finding interview.

### **REASONING AND CONCLUSIONS OF LAW:**

*For the reasons that follow, the administrative law judge concludes the claimant's March 9, 2020 separation from employment is not attributable to the employer.*

Iowa Code section 96.5(1)j provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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(15) provides:

Employee of temporary employment firm.

a. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm within three days of completion of an employment assignment and seeks reassignment under the contract of hire. The employee must be advised by the employer of the notification requirement in writing and receive a copy.

b. The individual shall be eligible for benefits under this subrule if the individual has good cause for not contacting the employer within three days and did notify the employer at the first reasonable opportunity.

c. Good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business; blinding snow storm; telephone lines down; employer closed for vacation; hospitalization of the claimant; and other substantial reasons.

d. Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer, or any other currently acceptable means of communications. Working days means the normal days in which the employer is open for business.

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of each temporary assignment so they may be reassigned and continue working. The plain language of the statute allows benefits for a claimant "who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment."

Claimant was trained on employer's reassignment policy upon hire. The claimant's assignment ended on March 9, 2020. Claimant did not contact the employer within three business days to request a new assignment. Accordingly, the claimant's separation from employment is attributable to the employer. Benefits are denied.

Because the claimant's separation was disqualifying, benefits were originally allowed. However, he did not receive any benefits and therefore there is no overpayment in accordance with Iowa Code § 96.3(7). The administrative law judge further concludes the employer did not satisfactorily participate in the fact-finding interview pursuant to Iowa Code § 96.3(7), Iowa Admin. Code r. 871-24.10.

The issues of whether claimant's March 9, 2020 separation is disqualifying in the prior claim year (effective March 22, 2020) and whether claimant was overpaid benefits are remanded to the Benefits Bureau for an initial investigation.

**DECISION:**

The November 3, 2021 (reference 02) initial decision is reversed. The claimant's separation was not attributable to the employer. Benefits are withheld until such time as he works in and has been paid for wages equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant has not been overpaid benefits for purposes of the claim effective March 21, 2021. The employer did not participate in the fact-finding interview.

**REMAND:**

The issues of whether claimant's March 9, 2020 separation is disqualifying in the prior claim year (effective March 22, 2020) and whether claimant was overpaid benefits are remanded to the Benefits Bureau for an initial investigation.



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February 3, 2022  
Decision Dated and Mailed

jlb/mh