

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TONYA L MOORE
Claimant

APPEAL 16A-UI-13102-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELITE STAFFING GLOBAL INC
Employer

**OC: 10/02/16
Claimant: Respondent (1)**

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:

Elite Staffing Global, Inc. (employer) filed an appeal from the December 1, 2016, (reference 01) unemployment insurance decision that allowed benefits based upon the determination it failed to furnish sufficient evidence that it discharged Tonya L. Moore (claimant) for disqualifying misconduct. The parties were properly notified about the hearing. A telephone hearing was held on December 30, 2016 at 9:00 a.m. The claimant participated personally. The employer provided notice at 8:26 a.m. the morning of the hearing that it would not be participating in the hearing and made a motion to have the fact-finding documents considered. Official notice was taken of the administrative record, specifically the fact-finding documents. No exhibits were offered or received into the record.

ISSUES:

Did the claimant quit by not reporting for additional work assignments within three business days of the end of the last assignment?
Has the claimant been overpaid unemployment insurance benefits?
Can the repayment of those benefits to the agency be waived?
Can 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 in a temporary full-time position as a Packer at the employer's client Ferrera beginning on May 24, 2016, and was separated from her assignment on September 7, 2016. The claimant learned her assignment had ended from the employer's representative Kathy after she had finished her shift. Kathy told the claimant her assignment had been ended as the client said she had been rude. The claimant denied being rude to anyone. She asked Kathy if there was another assignment available. Kathy said there was nothing at that time, but told the claimant to keep the employer informed of her availability. The claimant has maintained contact with the employer.

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. Benefits are allowed

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(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 and seeking work at the end of the temporary assignment. The employer has not established that the claimant engaged in conduct at the end of her assignment that would disqualify her from benefits. Since the claimant contacted the employer within three working days of the notification of the end of the assignment, requested reassignment, and there was no work available, benefits are allowed, provided she is otherwise eligible.

As benefits are allowed, the issues of overpayment and repayment are moot. The employer's account remains subject to charge for the claimant's benefits.

DECISION:

The December 1, 2016 (reference 01) unemployment insurance decision is affirmed. The claimant's separation from employment was attributable to the employer. The employer had adequate knowledge about the conclusion of the claimant's assignment and the request for more work but had no further work available at the time. Benefits are allowed, provided the claimant is otherwise eligible. The issues of overpayment and repayment are moot. The employer's account remains subject to charge for the claimant's benefits.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src