

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

MEGAN E BAILEY
Claimant

APPEAL NO. 19A-UI-04658-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWEST PROFESSIONAL STAFFING LLC
Employer

OC: 12/30/18
Claimant: Respondent (1)

Section 96.5-1-j – Separation from Temporary Employer
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Midwest Professional Staffing (employer) appealed a representative's May 30, 2019, decision (reference 03) that concluded Megan Bailey (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 3, 2019. The claimant participated personally. The employer participated by Liz Wilkinson, Office Manager, and Pat Winnike, Recruiter. The employer offered and Exhibit One was received into evidence. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary employment service. The claimant signed one document on February 2, 2019, indicating she was to contact the employer within three working days following the completion of an assignment to request placement in a new assignment. This document was labeled Voluntary Quit Policy and quoted a portion of Iowa Code Section 96.5-1(j). She signed another document on February 2, 2019, indicating she was to contact the employer within three days following the completion of an assignment to request placement in a new assignment. This document was labeled Assignment Contract. Both documents indicated the consequences of a failure to notify the employer. The claimant signed the documents electronically in her home. The employer did not tell the claimant it was sending electronic copies of the documents to the claimant's email address. The claimant did not know to look for the documents or ask for the documents when she did not receive them. The employer considered both documents to be part of the claimant's contract for hire.

The claimant performed services at Equifax as a temporary support agent from May 4, 2019, through May 9, 2019. On May 9, 2019, the claimant returned to her desk from break and realized she forgot to silence her cellphone. When she got her cellphone out to silence it, an

Equifax employee misinterpreted her actions. On May 9, 2019, a recruiter from the employer's office called and terminated the claimant's assignment. The recruiter told the claimant that an employee from Midwest Professional Staffing would call the claimant if the employer wished to continue representing her. When the employer did not contact the claimant, she assumed she was terminated and did not seek reassignment from the employer.

The claimant filed for unemployment insurance benefits with an effective date of December 30, 2018. The employer participated personally at the fact finding interview on May 29, 2019, by Pat Winnike and Keeley Fisher.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not separated from employment for a disqualifying reason.

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.

Under the Iowa Code the employer must advise the claimant of the three working day notice requirement and give the claimant a copy of that requirement. The notice requirement must be separate from the contract for hire. In this case, the employer had the claimant sign two different documents with two different notice requirements. Both of the documents were on separate pieces of paper but the employer considered them to be part of the contract for hire. While the employer did send the claimant a copy of the document by sending an email, the employer never ascertained whether the claimant received the document.

In addition, the claimant has provided cause for not seeking reassignment. She understood the recruiter to say the employer was making a decision about her further representation. The claimant did not contact the employer because she was waiting for the employer's call. The employer did not provide the claimant with the proper notice requirements and has, therefore, failed to satisfy the requirements of Iowa Code Section 96.5-1-j. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's May 30, 2019, decision (reference 03) is affirmed. The claimant was separated from the employer for good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn