

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERESA L TAMAYO
Claimant

APPEAL NO. 14A-UI-08222-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELS OF FLORIDA INC
Employer

OC: 06/29/14
Claimant: Respondent (5)

Iowa Code Section 96.5(1)(j) – Separation From Temporary Employment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 30, 2014, reference 02, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant's July 11, 2014 separation from the temporary employment firm was for good cause attributable to the employer. After due notice was issued, a hearing was held on August 29, 2014. Claimant Teresa Tamayo participated. James Clyde represented the employer. Exhibit One was received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits paid to the claimant. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and whether the claimant engaged in dishonesty and/or fraud in connection with the fact-finding interview.

ISSUE:

Whether the claimant's separation from the temporary employment agency 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: ELS of Florida, Inc., d/b/a Labor Finders, is a temporary employment agency. Claimant Tamara Tamayo performed work for the employer in a series of day labor assignments. The employment was part time. Ms. Tamayo was assigned to work at Worley Warehouse in Cedar Rapids. Ms. Tamayo's first day labor assignment at Worley Warehouse occurred on Friday, July 11, 2014. Ms. Tamayo most recently performed work for the employer on Tuesday, July 22, 2014. Ms. Tamayo would usual start the day's assignment at 6:00 a.m. and work eight hours. Because the employment was day labor, Ms. Tamayo was paid at the end of each day for the work she had performed that day.

On July 22 Ms. Tamayo left work early because she was experiencing chest pain and needed to go to the emergency room. Ms. Tamayo provided appropriate notice to Labor Finders and to her supervisor at Worley Warehouse and the employer approved Ms. Tamayo's early departure that day. Later that day Ms. Tamayo went to the Labor Finders office to collect her paycheck for the roughly two hours of work she had performed that day. Ms. Tamayo expressed a desire to return to Worley Warehouse for additional assignments. James Clyde, Assistant Manager, told Ms. Tamayo that Labor Finders could not place Ms. Tamayo in any additional assignments unless and until Ms. Tamayo provided medical documentation that released her to return to work. Ms. Tamayo told Mr. Clyde that she had paperwork in her car. Ms. Tamayo went out to her car and did not come back that day. When Ms. Tamayo got to her car, she saw that the paperwork she had only indicated that she had been seen at the emergency room and did not release her to return to work. That same day Ms. Tamayo returned to the emergency room to request documentation that released her to return to work. The emergency room staff declined to provide such documentation because a doctor had ordered a stress test to be scheduled at a later date. The emergency room staff advised Ms. Tamayo that she would have to wait for a call that would let her know when the stress test was scheduled.

On July 23, 2014 Ms. Tamayo telephoned Labor Finders and spoke to an employer representative. Ms. Tamayo told the representative that the doctor had not released her to return to work. The Labor Finders representative told Ms. Tamayo that she could not be placed in any additional assignments because she had not been released to return to work.

Ms. Tamayo subsequently underwent a stress test. Ms. Tamayo has never provided Labor Finders with medical documentation indicating that she has been released to return to work.

Ms. Tamayo subsequently made additional contact to Labor Finders, but has never provided documentation indicating she has been released to return to work.

Before Ms. Tamayo started her July 2014 Labor Ready assignments, she had most recently performed work for that employer in the fall of 2013 when she performed work in day labor assignments for about a month.

In June 2012, the employer had Ms. Tamayo sign a document that obligated her to report to Labor Finders within three days of the end of an assignment and sign the daily sign-in sheet or be deemed to have quit the employment. The document indicated that if Ms. Tamayo were found to have quit, that could affect her unemployment insurance benefit eligibility. The policy statement appeared by itself on the document. Ms. Tamayo initialed the document to indicate that she had received a copy of the document.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

- b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.
- c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.
- d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

The evidence does not establish a voluntary quit from the assignment. The evidence indicates instead a final absence on July 22, 2014 that was due to illness and that was properly reported to the employer. In other words, the evidence establishes an absence on July 22, 2014 was an excused absence under the applicable unemployment insurance law. Absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Employers may not graft on additional requirements to what is an excused absence under the law. See Gaborit v. Employment Appeal Board, 743 N.W.2d 554 (Iowa Ct. App. 2007). For example, an employee's failure to provide a doctor's note in connection with an absence that was due to illness properly reported to the employer will not alter the fact that such an illness would be an excused absence under the law. Gaborit, 743 N.W.2d at 557.

The evidence indicates that Ms. Tamayo completed her day labor assignment on July 22, 2014. The evidence indicates that Ms. Tamayo returned that same day to offer her services, but that the employer declined to make additional work available unless Ms. Tamayo provided a medical release. At the time, it was beyond Ms. Tamayo's power to provide the medical release the employer demanded before the employer would allow Ms. Tamayo to return to work.

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. 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.

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 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 separation at issue took place on July 22, 2014 not July 11, 2014. Ms. Tamayo's separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Ms. Tamayo is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Tamayo.

DECISION:

The Claims Deputy's July 30, 2014, reference 02, decision is modified only to indicate July 22, 2014 separation date. 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 she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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