

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NAVEL L AUGILAR

Claimant

APPEAL NO. 16A-UI-12405-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LABOR READY MIDWEST INC

Employer

OC: 10/09/16

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Navel Aguilar filed a timely appeal from the November 7, 2016, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on an agency conclusion that Mr. Aguilar had voluntarily quit the employment on July 23, 2016 without good cause attributable to the employer. After due notice was issued, a hearing was held on December 7, 2016. Mr. Aguilar participated. Megan Papesh represented the employer.

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: Labor Ready Midwest, Inc., is a temporary employment agency. The employer's business locations include an office in Cedar Rapids and an office in Iowa City. Navel Aguilar performed work for Labor Ready in a single, full-time temporary work assignment for Balfour Beatty Construction Company in Iowa City. Mr. Aguilar began the assignment on March 10, 2016 and last performed work in the assignment on July 21, 2016. At that time, the Balfour Beatty supervisor thanked Mr. Aguilar for his work and told him that his services were no longer needed. Other Labor Ready temporary workers at the same jobsite were not notified at that time that their assignments were being ended. However, those other workers had assigned to perform tasks that were different than the duties assigned to Mr. Aguilar. On the same day the assignment ended, Mr. Aguilar went to the Labor Ready office in Iowa City and spoke to a representative to let them know the assignment had ended and that he was available for additional work in the Iowa City area. The Labor Ready representative told Mr. Aguilar that no other work was immediately available in the Iowa City area and encouraged him to stay in touch. The employer had work available in the Cedar Rapids area, but Mr. Aguilar lacked a means to get from Iowa City to Cedar Rapids. The Labor Ready representative did not document the July 23, 2016 contact with Mr. Aguilar. Indeed, the employer's documentation of contact with Mr. Aguilar was at all relevant times either absent or incomplete. Mr. Aguilar resided in Iowa City at the time he accepted the Balfour Beatty assignment and continued to reside in Iowa City until he completed the assignment. Mr. Aguilar relied upon public transportation to get to work.

At the beginning of Mr. Aguilar's employment with Labor Ready, the employer had him sign a document that obligated him to contact the employer within three working days of the end of the assignment to request additional work or be deemed to have voluntarily quit and risk being disqualified for unemployment insurance benefits. Labor Ready did not provide Mr. Aguilar with a copy of the document he signed.

REASONING AND CONCLUSIONS OF LAW:

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 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(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.

When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See *Crosser v. Iowa Dept. of Public Safety*, 240 N.W.2d 682 (Iowa 1976).

The employer elected not to present testimony from anyone with personal knowledge of the particulars of Mr. Aguilar's employment. The employer had the ability to present such testimony. The employer's documentation of contact with Mr. Aguilar was conspicuously incomplete. The weight of the evidence establishes that Mr. Aguilar did indeed complete a work assignment on July 23, 2016 and did indeed make contact with the employer's Iowa City office that same day to request additional work in the Iowa City area. The employer had no such work available. Mr. Aguilar was not obligated to make himself available for work in the Cedar Rapids area while he lived in Iowa City. Indeed, because the evidence fails to establish that employer ever provided Mr. Aguilar with a copy of the end-of-assignment notification policy document he had signed, the employer failed to comply with the requirements of Iowa Code section 96.5(1)(j) and Mr. Aguilar was under no obligation to seek further work through the employer.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Aguilar's July 23, 2016 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Mr. Aguilar is eligible for benefits provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The November 7, 2016, reference 01, decision is reversed. The claimant's July 23, 2016 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The claimant is eligible for benefits provided he 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

jet/rvs