

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FLORENCIO REYES

Claimant

APPEAL NO. 09-UI-02625-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC

Employer

OC: 01/25/09

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Florencio Reyes filed a timely appeal from the February 13, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 13, 2009. Mr. Reyes participated. Spanish-English interpreter Ike Rocha assisted with the hearing. Sarah Fiedler, Claims Administrator, represented the employer. Exhibits A and One were received into evidence.

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: The employer is a temporary employment agency. Florencio Reyes established his employment relationship with Team Staffing Solutions in January 2006 and worked in six temporary employment assignments. On May 4, 2007, Mr. Reyes suffered an ankle/leg injury while working for the employer in an assignment. On May 23, 2007, the employer placed Mr. Reyes in a full-time, light-duty assignment at Pearl City Outreach. The hours of the employment were 8:00 a.m. to 4:00 p.m., Monday through Friday. Mr. Reyes worked in a kitchen getting coffee ready. Mr. Reyes performed the work sitting down.

On Thursday, January 8, 2009, Mick Black, Director of Human Resources for Team Staffing Solutions, notified Mr. Reyes that the assignment was ended. Mr. Black met with Mr. Reyes at the assignment and utilized an interpreter. Mr. Reyes is a non-English speaking person and his native language is Spanish. Mr. Black told Mr. Reyes that the assignment was being ended because the employer's worker's compensation insurer had determined that Mr. Reyes had reached maximum medical improvement. Mr. Reyes asked about additional work assignments. Mr. Black told Mr. Reyes he would need to reapply with Team Staffing Solutions and would need to update his application and other documentation. This was despite the fact that Mr. Reyes has been continuously employed by the employer since spring 2007. Mr. Black told

Mr. Reyes that he would need to bring his own interpreter to the Team Staffing office to complete the necessary updated materials.

On Friday, January 9, 2009, Mr. Reyes went to the Team Staffing Solutions office to collect his paycheck. Mr. Reyes did not take an interpreter and did not complete a new application.

The employer has an end-of-assignment notification policy. The policy follows the requirements of Iowa Code section 96.5(1)(j). The employer reviewed the policy with Mr. Reyes in March 2007.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

871 IAC 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.

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.

The weight of the evidence in the record indicates that the employer discharged Mr. Reyes from his assignment on January 8, 2009. The discharge was not based on any form of misconduct. See Iowa Code section 96.5(2)(a) and 871 IAC 24.32(1)(a). The evidence indicates that Mr. Reyes was in contact with the employer on January 8, 2009 and specifically inquired about additional assignments. The employer did not provide another assignment at that time. The employer imposed an impediment to Mr. Reyes' further employment and discouraged Mr. Reyes' further employment. The employer told Mr. Reyes it did not have work for disabled persons such as Mr. Reyes. The employer imposed the unreasonable requirement that Mr. Reyes reapply for work with Team Staffing Solutions, despite the fact that he had been continuously employed by Team Staffing Solutions since spring 2007. Mr. Reyes fulfilled the requirements of Iowa Code section 96.5(1)(j) when he notified the employer on January 8, 2009 that he was available for additional assignments. Mr. Reyes had become partially disabled as a result of a work related incident. The employer had an obligation to provide reasonable accommodations that would allow Mr. Reyes to continue in the work. See Sierra v. Employment

Appeal Board, 508 N.W. 2d 719 (Iowa 1993). The evidence indicates that the employer had the ability to provide reasonable accommodations because the employer had been doing so for more than a year and a half.

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

DECISION:

The Agency representative's February 13, 2009, reference 01, decision is reversed. 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 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/pjs