

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

EDDIE STEVENSON
Claimant

RANDSTAD US LLC
Employer

APPEAL 17A-UI-09666-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/13/17
Claimant: Respondent (5R)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
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:

The employer filed an appeal from the September 11, 2017, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 6, 2017. Claimant did not register for the hearing and did not participate. Employer participated through market manager Heather Wilming. Official notice was taken of the administrative record, including claimant's benefit payment history and fact-finding documents, with no objection.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Has the claimant been overpaid unemployment insurance benefits, and if so, 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 employer is a staffing agency. Claimant was employed long term temporary full-time as a packaging employee last assigned at Raining Rose from August 1, 2017, and was separated from the assignment, but not the employment, on August 9, 2017.

On August 9, 2017, Raining Rose contacted the employer and informed it that claimant had been separated from the client (Raining Rose) when he walked off/quit after having been coached. After receiving this information, Ms. Wilming attempted to contact claimant on August 9, 2017, but she was unsuccessful. Ms. Wilming left a message with claimant notifying

him that he had walked off the job and if he wanted an additional assignment he needed to contact the employer within three business days.

The employer has a policy that requires employees to contact the employer after their assignment ends within three business days and request an additional assignment. The employer has a signed electronic copy and claimant was also provided with an employee handbook that contained the policy. This policy is not separate from any contract of employment; it was a part of the employee handbook. Claimant was not given a copy of the signed policy, but was given a copy of the employee handbook that contained the policy. Claimant did not request placement in a new assignment within three working days of the assignment ending pursuant to the employer's notification requirement. Claimant did not contact the employer within three business days of August 9, 2017.

Since August 9, 2017, the employer has notified claimant via e-mail and text messages when an assignment that meets his criteria has opened up. Claimant did not reply to these notifications. The employer requires employees to contact the employer to report their availability every Friday. If an employee does not report their availability, they are considered inactive. Claimant has not contacted the employer to report his availability. Ms. Wilming testified the employer would place claimant on another assignment if he reported to the employer.

Claimant did not contact the employer until September 2017. When claimant contacted the employer in September he did not ask for an additional assignment. Claimant has not requested an additional assignment since he was separated from his last assignment on August 9, 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not discharged from employment, but claimant's separation from employment was attributable to the employer. Benefits are allowed.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The disqualification shall continue until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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.

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.

Iowa Code § 96.5(1)(j)(2) specifically requires a temporary employment firm's policy "shall be *separate* from any contract of employment and a copy of the signed document *shall be provided* to the temporary employee." Iowa Code § 96.5(1)(j)(2)(emphasis added). The employer had a policy requiring claimant to contact it within three business days of the end of the assignment and request an additional assignment. Claimant also electronically signed the policy. However,

claimant was not given “a copy of the *signed* document[.]” Iowa Code § 96.5(1)(j)(2)(emphasis added). The document was also not “*separate* from any contract of employment[;]” it was in the employee handbook. Iowa Code § 96.5(1)(j)(2)(emphasis added). Furthermore, no evidence was presented that claimant received the employer’s voicemail on August 9, 2017. Since the employer did not provide instruction about what to do at the end of the assignment according to Iowa Code § 96.5(1)(j), the separation is not disqualifying. Benefits are allowed.

As benefits are allowed, the issues of overpayment, repayment, and the chargeability of the employer’s account are moot.

DECISION:

The September 11, 2017, (reference 02) unemployment insurance decision is modified with no change in effect. Claimant was not discharged from employment, but claimant’s separation from employment was attributable to the employer. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

REMAND: The issue of whether claimant was able and available for work as of August 9, 2017 as delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs