

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**BRANDON L ABBOTT**  
Claimant

**TEAM STAFFING SOLUTIONS INC**  
Employer

**APPEAL 16A-UI-09442-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/14/16  
Claimant: Appellant (1)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 25, 2016, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on September 22, 2016. The claimant participated personally. The employer participated through Sarah Fiedler, HR Generalist. Employer exhibit 1 was received into evidence. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the claimant quit by not reporting for an additional work assignment within three business days of the end of the last assignment?

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant was last assigned at Epic Tube and Fabrication from March 21, 2016, to April 19, 2016. After the assignment ended, the claimant called the employer on April 19, 2016, and spoke to account manager, Mary Kirchner. Ms. Kirchner documented her call in the employer's documentation system, and indicated the claimant referenced filing for unemployment and told Ms. Kirchner he would be into the office on April 20, 2016 to discuss job options. The claimant stated he was not required to sign in and had a "quick" conversation with Mary Kirchner on April 20, 2016 and that she reportedly told him no work was available at that time. The claimant did not ever follow up with Ms. Kirchner but reportedly waited to hear back about a possible assignment that would come up in May.

The employer reported that when an employee requests another assignment, their availability must be updated and any request for assignment, is recorded in the employer's documentation system, which is viewable to all employees. The employer had no further documentation or indication of contact with the claimant after his phone call on April 19, 2016, and contends the

claimant did not report to the employer within three working days and request further assignment as required by written policy. (Employer's Exhibit 1) Had the claimant reported for future reassignment, there was work available.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer.

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.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge finds the testimony of the employer to be more credible than the claimant. The claimant did not seek reassignment upon completion of his assignment, as required.

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of each temporary assignment so they may be reassigned and continue working. The plain language of the statute allows benefits for a claimant "who notifies the temporary employment firm of completion of an employment assignment *and* who seeks reassignment." (Emphasis supplied.)

In this case, the employer tracks its contacts with employees, and includes documentation each time an employee seeks reassignment. In addition, before being offered reassignment, an employee must verify availability. The credible evidence presented by the employer is that the claimant spoke to account manager, Mary Kirchner, on April 19, 2016, to notify of the completion of his assignment. He also told her that he would be in to meet with her the following day to discuss reassignment. There are no notes or indicators that such meeting took place.

While the claimant contends he was told there was no work available, the employer indicated there was work available, had he made contact, as alleged. Further, consistent with the employer's notes, the claimant immediately filed for unemployment benefits, but admits he made no other attempts with the employer after he allegedly was told there was no work available by Ms. Kirchner. Based on the evidence presented, the administrative law judge is not persuaded the claimant notified the employer of his availability or requested another assignment and, therefore, is considered to have quit the employment. Benefits are denied.

**DECISION:**

The August 25, 2016, (reference 01) decision is affirmed. The claimant's separation was not attributable to the employer. Benefits are withheld until such time as he works in and has been paid for wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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