

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ISAAC P GITCHEL

Claimant

APPEAL NO. 09A-UI-04556-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANPOWER INC OF D M

Employer

OC: 02/01/09

Claimant: Respondent (1)

Iowa Code section 96.5(1)(j) – Separation From Temporary Employment
871 IAC 24.26(19) – Separation from Temporary Employment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 10, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on April 16, 2009. Claimant Isaac Gitchel did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Regen Patterson, Branch Manager, represented the employer. Exhibit One was 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. Isaac Gitchel established his employment relationship with Manpower Incorporated of Des Moines on August 18, 2006 and performed work on one temporary employment assignment. The assignment was a full-time position at Mid American Energy. The assignment started on August 28, 2006 and ended on January 30, 2009. Mid American Energy ended the assignment because it no longer needed Mr. Gitchel's services. In other words, Mr. Gitchel was to be laid off from the assignment effective January 30. Mid American Energy notified Mr. Gitchel in mid-January that the assignment would be coming to an end on January 30, 2009.

On January 19, Mr. Gitchel stopped into the Manpower office and notified Branch Manager Regan Patterson that the assignment would be ending on January 30. Mr. Gitchel at that time asked for Manpower's assistance in securing a new assignment. Manpower did not at that time have a new assignment available for Mr. Gitchel. On January 28, Mr. Gitchel sent an e-mail message to Manpower in which he stated he no longer wanted Manpower to find him a new assignment and would be seeking other employment. Mr. Gitchel continued in the assignment at Mid American Energy until that assignment ended on January 30.

There was no further contact between Mr. Gitchel and Manpower until March 17, 2009, when Mr. Gitchel contacted Manpower to indicate he was available for a new assignment.

On August 18, 2006, the employer had Mr. Gitchel sign a "Policy, Procedure and Information Acknowledgment." The document included a policy requiring Mr. Gitchel to contact Manpower for reassignment within three working days of the end of an assignment. The document contained several additional work rules. The document indicated on its face that Mr. Gitchel was to receive a copy of the signed document. At some later point, the employer commenced using a separate form setting forth an end-of-assignment notification policy by itself. However, the employer did not have Mr. Gitchel execute the new form.

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.

The weight of the evidence indicates that the "Policy, Procedure and Information Acknowledgment" document the employer executed with Mr. Gitchel did not satisfy the requirements of the statute, which requires that the end-of-assignment notification policy be set forth by itself on a separate document. The purpose of the separate document is to provide employees of temporary agencies heightened notice of the policy. Because the employer's policy statement, as it was executed with Mr. Gitchel, did not satisfy the requirements of the statute, the employer cannot claim the benefits of the statute and the administrative rule controls instead. The evidence indicates that Mr. Gitchel completed his assignment at Mid American Energy and thereby fulfilled the contract for hire. Mr. Gitchel's election at that time not to pursue a new assignment with the employer would not disqualify him for unemployment insurance benefits.

Mr. Gitchel's January 30, 2009 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Mr. Gitchel is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Gitchel.

DECISION:

The Agency representative's March 10, 2009, reference 01, decision is affirmed. 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