

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOSHUA L DAVIS

Claimant

APPEAL NO. 20R-UI-10968-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC

Employer

OC: 04/05/20

Claimant: Respondent (1R)

Iowa Code Section 96.5(1) – Voluntary Quit

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

Iowa Code Section 96.3(7) – Recovery of Overpaid Benefits

Public Law 116-136, Section 2104(b) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 13, 2020, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on February 10, 2020 for no disqualifying reason. After due notice was issued, a hearing was held on June 8, 2020 with administrative law judge, James Timberland. Claimant Joshua Davis participated. The employer participated through Sarah C. Fiedler, Risk Manager. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant (DBRO and KPYX). The fact-finding interview materials were not available at the time of the appeal hearing.

A hearing decision was issued, which reversed the allowance of benefits to the claimant. See 20A-UI-04347-JT-T. The claimant filed an appeal to the Employment Appeal Board, who remanded the matter for the limited purpose of evidence on the issue of whether the claimant made a timely request for another job assignment.

After proper notice, a telephone hearing was conducted on October 15, 2020 with administrative law judge, Jennifer L. Beckman. The employer participated through Sarah C. Fiedler, Risk Manager. Claimant did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. Inasmuch as the decision was not vacated as a result of the EAB remand, the hearing record and administrative law judge's findings of fact in appeal 20A-UI-04347-JT-T were adopted and incorporated.

ISSUES:

Whether the claimant timely requested a new assignment.

Whether the claimant was discharged for misconduct in connection with the employment.

Whether the claimant voluntary quit for good cause attributable to the employer.

Whether the claimant has been overpaid regular benefits.

Whether the claimant must repay regular benefits.

Whether the employer's account may be charged for overpaid regular benefits.
Whether the claimant was overpaid Federal Pandemic Unemployment Compensation.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Inasmuch as the decision was not vacated as a result of the EAB remand, the administrative law judge's findings of fact in appeal 20A-UI-04347-JT-T is hereby adopted and incorporated herein as the findings of fact for this appeal, 20R-UI-10968-JC-T.

This decision adds:

Claimant was trained on employer rules and procedures including its reassignment policy. Employer's reassignment policy requires that an employee check in within three business days of an assignment ending to request a new assignment. Employer documents in its software when employees contact the employer and request a new assignment. Acceptable methods of contact include visiting a local office, calling, texting, or logging on to the employer's software program and checking in. Claimant's assignment on February 10, 2019 ended when he quit the assignment. He requested a new assignment on February 11, 2019 per employer's reassignment policy. Work was not immediately available.

Claimant was subsequently offered assignments for S&J Tube and Shearers on February 13, 2020 but declined them. The issue of whether the claimant refused an offer of work on February 13, 2020 has not yet been addressed by the Benefits Bureau.

REASONING AND CONCLUSIONS OF LAW:

As a preliminary matter, the Reasoning and Conclusions of Law of the administrative law judge in appeal 20A-UI-04347-JT-T are **not** adopted and incorporated for this appeal, 20R-UI-10968-JC-T.

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment with good cause attributable to the employer.

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(15) provides:

Employee of temporary employment firm.

a. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm within three days of completion of an employment assignment and seeks reassignment under the contract of hire. The employee must be advised by the employer of the notification requirement in writing and receive a copy.

b. The individual shall be eligible for benefits under this subrule if the individual has good cause for not contacting the employer within three days and did notify the employer at the first reasonable opportunity.

c. Good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business; blinding snow storm; telephone lines down; employer closed for vacation; hospitalization of the claimant; and other substantial reasons.

d. Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer, or any other currently acceptable means of communications. Working days means the normal days in which the employer is open for business.

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." In this case, the claimant did timely request a new

job assignment after his assignment ended with Siemens on February 10, 2020. Claimant contacted the employer on the next day to request a new assignment and no work was immediately available. Accordingly, the claimant's separation from employment is attributable to the employer. Benefits are allowed, provided he is otherwise eligible.

The issue of whether the claimant refused a suitable offer of work on February 13, 2020 is remanded to the Benefits Bureau for an initial investigation and decision.

Because the claimant is eligible for benefits, the issues of overpayment and relief of charges are moot.

PL116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

....

(f) Fraud and Overpayments

(2) Repayment.--In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

Because this decision has determined the claimant is qualified to receive regular benefits, he is eligible for Federal Pandemic Unemployment Compensation (FPUC) if he meets all other requirements. (The employer would not be charged for FPUC.)

DECISION:

The May 13, 2020, reference 01, decision is AFFIRMED. The claimant voluntarily quit the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible. Because claimant is qualified to receive regular benefits, he is eligible for Federal Pandemic Unemployment Compensation (FPUC) if he meets all other requirements.

REMAND: The issue of whether the claimant refused a suitable offer of work on February 13, 2020 is remanded to the Benefits Bureau for an initial investigation and decision.



Jennifer L. Beckman
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October 27, 2020
Decision Dated and Mailed

jlb/sam