

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH E HAMERLY
Claimant

APPEAL NO. 11A-UI-00278-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**L A LEASING INC
SEDONA STAFFING**
Employer

**OC: 06/12/11
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Joseph Hamerly filed a timely appeal from the January 6, 2011, reference 05, decision that denied benefits based on an Agency conclusion that he had voluntarily quit without good cause attributable to the employer on November 23, 2011. After due notice was issued, a hearing was held on February 6, 2012. Mr. Hamerly participated. Chad Baker represented the employer and presented additional testimony through Sammy Teel.

ISSUE:

Whether Mr. Hamerly's separation from the employer on or about November 23, 2011 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. On August 22, 2011, Joseph Hamerly started a full-time work assignment at Flow Pro in Amana. Mr. Hamerly worked as a full-time Lead Man for the installation crew and oversaw the work of other Sedona Staffing employees assigned to Flow Pro. Mr. Hamerly's supervisor in the assignment was Sean Conaway. After he started the assignment in August, Mr. Hamerly performed work in the assignment until Wednesday, November 23, 2011, the day before Thanksgiving. At that point, Mr. Hamerly and the rest of the Sedona Staffing workers assigned to Flow Pro were on a scheduled Thanksgiving holiday break. The break was to last through Sunday, November 27, 2011. Before the break, Mr. Conaway had told Mr. Hamerly that he would contact him on Monday, November 28, with information regarding when the crew should report back to work. Mr. Conaway did not contact Mr. Hamerly that Monday. Instead, Mr. Conaway contacted Mr. Hamerly on Tuesday, November 29 to advise of a computer system issue that would prevent the Sedona Staffing workers from returning to work for the immediate future.

On November 30, Mr. Hamerly contacted Sedona Staffing for the purpose of advising that company that Flow Pro did not have work for him or others and to indicate his availability for further work. Mr. Hamerly followed up on December 6 to again request work through Sedona Staffing.

In 2009, the employer presented Mr. Hamerly with a copy of its end-of-assignment notification policy. The policy obligated Mr. Hamerly to notify the employer within three working days of the end of the

assignment to indicate his availability for work. The policy appeared as single policy on a separate document. Mr. Hamerly got a copy of the policy.

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 employer's end-of-assignment policy complied with the requirements of the statute. It was a clear and concise statement. Mr. Hamerly signed the policy and received a copy. The weight of the evidence indicates that Mr. Hamerly continued in the assignment at Flow Pro until Tuesday, November 29, 2011, when the Flow Pro representative notified him there would be no work for the immediate future. Mr. Hamerly notified Sedona Staffing within a day of receiving word from Flo Pro that the assignment was going to end temporarily.

November 23 through November 27 simply do not count toward the three workday notice requirement. On November 23, Mr. Hamerly worked in the assignment. November 24 was the Thanksgiving holiday. On November 25, the Friday after Thanksgiving holiday, both Flow Pro and Sedona Staffing were closed for the holiday. Mr. Hamerly was still in the assignment, but not schedule to work Saturday or Sunday, November 26-27. In other words, the next working day after November 23 was Monday, November 28. The assignment did not end until November 29, when Mr. Hamerly got the word from Mr. Conaway.

Mr. Hamerly's contact with Sedona Staffing on November 30 satisfied the statutory requirement. Mr. Hamerly was the only person to testify from personal knowledge regarding his call to Sedona Staffing after he got word from Flow Pro that there was no work. The employer presented no testimony from the other participant in the November 30 telephone call despite having the ability to present such testimony. The employer has presented insufficient evidence to rebut Mr. Hamerly's assertion that he did indeed inquire about additional work during the call.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Hamerly's separation on November 29, 2011—not November 23, 2011—was for good cause attributable to the temporary employment agency. Based on the November 2011 separation, Mr. Hamerly is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Hamerly.

DECISION:

The Agency representative's January 6, 2011, reference 05, decision is reversed. The claimant's separation from the temporary employment agency on November 29, 2011 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/kjw