

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**MARK D EMERY
1201 NEBRASKA ST APT 2
MUSCATINE IA 52761**

**RJ PERSONNEL INC
TEMP ASSOCIATES
PO BOX 1061
MUSCATINE IA 52761-0018**

**Appeal Number: 05A-UI-02395-JTT
OC: 05/16/04 R: 04
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1)(j) – Voluntary Quit—Temporary Employment

STATEMENT OF THE CASE:

Mark Emery filed a timely appeal from the February 23, 2005, reference 04, decision that denied benefits. After due notice was issued, a hearing was held on March 24, 2005. Claimant did participate. Employer did participate through Kevin Jensen, Vice President. Exhibit One was received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mark Emery was employed by Temp Associates temporary employment agency as a full-time sanitation worker from August 25, 2003 until March 16, 2005. Mr. Emery's final assignment was with the City of Muscatine. Prior to signing on with Temp Associates, Mr. Emery had

worked for the City of Muscatine through another temporary employment agency, but switched employers when the City of Muscatine entered into its contract with Temp Associates. On August 22, 2003, Mr. Emery signed an acknowledgement of his obligation to inform Temp Associates within three working days of the end of the assignment. The agreement required Mr. Emery to advise the agency even if the assignment was only "temporarily stopped." Mr. Emery's assignment with the City of Muscatine ended on January 3, 2005. Mr. Emery did not advise Temp Associates that the assignment had ended. On January 24, 2005, Temp Associates staff noticed that the City of Muscatine had not reported any hours for Mr. Emery and contacted that City's representative, Debbie Yerington. At that time, Temp Associates learned Mr. Emery had last worked a shift on January 3 and that the City had attempted to contact him for work after that date, but had been unable to reach him. Mr. Emery does not have a telephone and relies on a neighbor to relay telephone messages.

REASONING AND CONCLUSIONS OF LAW:

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

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 purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of the temporary assignment. The evidence in the record establishes that Mr. Emery's assignment ended on January 3, 2005 and that Mr. Emery never advised the employment agency that the assignment had ended. Rather, on January 24, the agency learned on its own that the assignment had ended. During the hearing, Mr. Emery's testimony indicated that he did not pay very close attention to his obligations to inform the new temporary employment agency of his status. Mr. Emery testified that when he had worked for the City of Muscatine through the previous temporary employment agency, the agency had considered him temporarily laid off during part of the winter. Mr. Emery argued at the hearing that he was on a temporary lay off in January 2005. The evidence did not support this argument.

Mr. Emery's voluntary leaving of the employment was without good cause attributable to the employer. Accordingly, a disqualification will enter.

DECISION:

The Agency representative's February 23, 2005, reference 04, decision is affirmed. The claimant failed to advise the temporary employment agency within three working days that his assignment had ended. The claimant's separation from employment was not for good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

jt/pjs