

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTIAN M BOUSKA

Claimant

APPEAL NO. 10A-UI-10333-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LABOR READY MIDWEST INC

Employer

OC: 05/23/10

Claimant: Appellant (2-R)

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

STATEMENT OF THE CASE:

Christian Bouska filed a timely appeal from the July 15, 2010, reference 04, decision that denied benefits in connection with a separation from the employer on or about May 15, 2010. After due notice was issued, a hearing was held on September 7, 2010. Mr. Bouska did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Becky Redfearn represented the employer. Exhibit One was received into evidence.

ISSUE:

Whether the claimant's May 2010 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. The claimant completed a one-day temporary employment work assignment on May 11, 2010 and another on May 13, 2010. The claimant next made contact with the employer on June 1, 2010 and performed work in another one-day assignment.

The employer has a written end-of-assignment notice policy. The policy obligated Mr. Bouska to contact the employer within three working days of completing an assignment to notify the employer that he was available for a new work assignment. The policy appears as part of a full page, single-spaced document. While the document contains the policy statement, half of the page consists of a portion of the text of Iowa Code section 96.5(1)(j). The signature paragraph provides conflicting information. It indicates that the person signing is acknowledging receiving the form, but later indicates that the person signing is acknowledging having "had the opportunity to *request* a copy" of the form. Mr. Bouska signed the form on May 11, 2010. The employer did not provide Mr. Bouska with a copy of the document.

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 notice policy does not comply with the requirement in Iowa Code section 96.5(1)(j) that the policy be set forth in a *clear and concise* manner. The employer instead buried the policy in a full-page, single-spaced document, half of which consisted of the text of the statute. The employer also failed to comply with the statute by failing to provide Mr. Bouska with his own copy of the document. Because the employer did not comply with the requirements of Iowa Code section 96.5(1)(j), the employer cannot claim the benefit of the statute to disqualify Mr. Bouska for benefits. Mr. Bouska's obligation to the employer was fulfilled with the completion of each one-day work assignments. Mr. Bouska's failure to make contact with employer until June 1, 2010 after completing the May 13, 2010 one-day work assignment would not disqualify Mr. Bouska for unemployment insurance benefits.

The evidence indicates there were subsequent separations in June 2010 that were not addressed as part of the decision on appeal in this matter. This matter will be remanded to the Claims Division to address the effect of the June 2010 separations on the claimant's eligibility for benefits and the employer's liability.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that the May 13, 2010 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Mr. Bouska is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Bouska.

DECISION:

The Agency representative's July 15, 2010, reference 04, decision is reversed. The claimant's May 13, 2010 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.

This matter is remanded to the Claims Division to address the effect of the June 2010 separations on the claimant's eligibility for benefits and the employer's liability.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw