

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEREMY L WILES
Claimant

APPEAL NO. 09A-UI-02901-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAMBRIDGE TEMPOSITIONS INC
Employer

OC: 01/18/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct
Section 96.5-1-j – Reassignment from Temporary Employer

STATEMENT OF THE CASE:

Cambridge Tempositions Inc. filed an appeal from a representative's decision dated February 20, 2009, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 19, 2009. The claimant participated personally. The employer participated by Stephanie Matteson, Account Manager.

ISSUE:

At issue in this matter is whether the claimant sought reassignment to this temporary employer.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: Mr. Wiles had been associated with Cambridge Tempositions for an extended period. At the time he began working through Cambridge Tempositions the claimant signed an agreement to contact the employer within three days after an assignment had ended. During May of 2008, Mr. Wiles was assigned to work through Cambridge Tempositions at Maher Moving Company. The claimant continued to be employed by Cambridge working for Maher for an extended period of time. The practice used by the parties was to have Maher inform Mr. Wiles either directly or through its own scheduling of work that was available to the claimant through Cambridge Tempositions at Maher Moving. The claimant therefore did not contact Cambridge Tempositions each time an assignment with Maher Moving ended because he reasonably concluded that Maher would be contacting him or that he should be contacting Maher for additional scheduling. This practice was accepted by the parties for an extended period. Between August 8 and August 15, 2008, Mr. Wiles contacted Cambridge for a different outside assignment temporarily and was assigned to work at the Apache Company. Upon completing that assignment Mr. Wiles again began working at Maher Moving through Cambridge using the contact method above described.

Mr. Wiles last performed services for Cambridge Tempositions at Maher Moving on September 23, 2008. The claimant followed the usual practice of remaining available for Maher, waiting for them to call him and alternatively contacting Maher by telephone to check his computerized scheduling. When the claimant finally made contact with a direct representative of Maher on or about October 5 he was informed for the first time that no additional work was going to be available from Maher for a period of time. The claimant contacted Cambridge the next day seeking employment and was told no work was available to him.

It is the employer's position that Mr. Wiles needed to contact Cambridge Tempositions within three days of the completion of any assignment.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the claimant violated the agreement of hire by failing to contact the temporary employment service within three days of the end of his most recent assignment through that temporary service. It does not.

The evidence in the record clearly establishes that by practice Mr. Wiles was not required to contact Cambridge Tempositions each time a temporary assignment came to an end. The claimant had been assigned to a unique temporary working arrangement with a client employer, Maher Moving. Under the agreement Mr. Wiles was contacted by Maher for additional work and Maher would subsequently issue a pay slip so that Cambridge Tempositions could pay Mr. Wiles for the time that he had worked for Maher Moving. Because of this flexible arrangement the claimant was not required to call in within three days of each assignment end at Maher and reasonably did not believe that he had an obligation to do so. After the end of his most recent assignment with Maher, the claimant did not know that work would not be available to him again and he reasonably expected that Maher would be calling him or that he would find out that he was being scheduled through Maher's computerized telephone scheduling. When the claimant first became apprised that he his assignment at Maher had ended and he was told on October 5, he followed a reasonable course of action by merely contacting Cambridge Tempositions. At that time no additional work was available to him.

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.

Because the three-day rule was not utilized in practice for an extended period of time, Mr. Wiles reasonably concluded that he was not required to adhere to it. The claimant contacted the temporary service within three days as soon as he became apprised that no further assignments were available at Maher through Cambridge. Claimant's separation was therefore due to lack of work when no additional assignments were available to him at that time.

DECISION:

The representative's decision dated February 20, 2009, reference 01, is affirmed. The claimant was separated by the employer under nondisqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets other eligibility requirements of the law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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