

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**LETEH J BARIKOR**  
Claimant

**APPEAL NO. 18A-UI-04176-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EMPLOYER SOLUTIONS STAFFING  
GROUP**  
Employer

**OC: 03/11/18**  
**Claimant: Respondent (1R)**

Section 96.5-1-j – Separation from Temporary Employer  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Employer Solutions Staffing Group (employer) appealed a representative's March 28, 2018, decision (reference 01) that concluded Leteh Barikor (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 27, 2018. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Melanie Haluptzok, Unemployment Benefits Specialist, and Amner Martinez, and Operations Manager. Exhibit D-1 was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary employment service. The claimant performed services from November 2, 2017, through March 8, 2018. He signed a document on November 2, 2017, indicating he was to contact the employer within three working days following the completion of an assignment to request placement in a new assignment. The document did indicate the consequences of a failure to notify the employer. He was given a copy of the document which was not separate from the contract for hire.

The employer did not issue the claimant any warnings during the claimant's employment. The claimant was absent from work on March 12, 2018, without proper notice to the employer. The employer ended the claimant's assignment on March 12, 2018. The claimant completed his last assignment on March 12, 2018, and sought reassignment from the employer. The employer offered the claimant three other assignments on March 12, 2018. The claimant refused all three for varying reasons.

The claimant filed for unemployment insurance benefits with an effective date of March 11, 2018. The employer participated personally at the fact finding interview on March 27, 2018, by Melanie Haluptzok.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not separated from employment for a disqualifying reason.

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.

Under the Iowa Code the employer must advise the claimant of the three day notice requirement and give the claimant a copy of that requirement. The notice requirement must be separate from the contract for hire. The employer did not provide the claimant with the proper notice requirements and has, therefore, failed to satisfy the requirements of Iowa Code Section 96.5-1-j. Benefits are allowed, provided the claimant is otherwise eligible.

In the alternative, the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The disqualification shall continue until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984).

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. The employer has not established that the claimant was warned that further unexcused absences could result in termination of employment. In addition, the employer has not provided any more than one incident of absenteeism. One absence cannot be considered excessive. The employer did not provide sufficient evidence of job-related misconduct. It did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

The issue of whether the claimant refused suitable work is remanded for determination.

**DECISION:**

The representative's March 28, 2018, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed, provided claimant is otherwise eligible. The issue of whether the claimant refused suitable work is remanded for determination.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs