

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

SAYSAMONE K PHOUNGHARATH
101 LOCUST ST
DES MOINES IA 50309

DES STAFFING SERVICES INC
3326 INDIANOLA AVE
DES MOINES IA 50315

Appeal Number: 05A-UI-02561-S2T
OC 06/20/04 R 02
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party request the Appeals Section to reopen the record at the address listed at the top of this decision or 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 - Separation from Temporary Employer
Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

DES Staffing Services (employer) appealed a representative's March 3, 2005 decision (reference 03) that concluded Saysamone Phoungarath (claimant) was eligible to receive unemployment insurance benefits based on his separation from work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 29, 2005. The claimant did not provide a telephone number where he could be reached and, therefore, did not participate. The employer participated by Kathy Anderson, Human Resources Coordinator, and Elisa Rivera, Placement Person.

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 August 23, 2004, through February 4, 2004. He signed a document on August 12, 2004, indicating that he was to contact the employer within three days following the completion of an assignment to request placement in a new assignment.

The claimant was assigned to work at Airtex on October 6, 2004, as a full-time laborer. The claimant completed his assignment on January 18, 2005, but did not seek reassignment from the employer. On January 21, 2005, the employer telephoned the claimant and offered him another position.

He was assigned to work at Iowa Cold on January 24, 2005, as a part-time laborer working only that one day. The claimant did not seek reassignment from the employer until January 28, 2005. The employer offered him another position.

The claimant was assigned to work at Reames on January 31, 2005, as a full-time laborer. The claimant offered his resignation after working February 4, 2005, due to lack of transportation. Continued work was available to the claimant had he not resigned.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant was separated from the employer for any disqualifying reason. As an employee of a temporary service, the claimant was required to request reassignment after the completion of his last assignment.

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.

The claimant did not request reassignment and has, therefore, failed to satisfy the requirements of Iowa Code section 96.5-1-j. Benefits are denied.

The issue is whether the claimant voluntarily quit without good cause attributable to the employer. For the following reasons the administrative law judge concludes he did.

Iowa Code section 96.5-1 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.

871 IAC 24.25(1) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(1) The claimant's lack of transportation to the work site unless the employer had agreed to furnish transportation.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by his words and actions. He told the employer that he was leaving and quit work. When an employee quits work because of lack of transportation, his leaving is without good cause attributable to the employer. The claimant left work because of lack of transportation. His leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The representative's March 3, 2005 decision (reference 03) is reversed. The claimant was separated for no good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount provided he is otherwise eligible.

bas/tjc