

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARCUS L BARNES

Claimant

APPEAL NO. 12A-UI-07502-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES STAFFING SERVICES INC

Employer

OC: 10/23/11

Claimant: Appellant (2)

Section 96.5-1-j – Seeking Reassignment from Temporary Employer

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated June 13, 2012, reference 09, which denied benefits, finding the claimant failed to notify the temporary employment firm within three working days of the completion of his last work assignment. After due notice was issued, a telephone hearing was held on August 9, 2012. The claimant participated. The employer participated by Ms. Stacy Navarro, human resource coordinator.

ISSUE:

At issue is whether the claimant left employment by failing to contact the temporary employment service within three working days after the completion of his last work assignment.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Marcus Barnes was most recently employed by DES Staffing from February 27, 2012, until May 11, 2012, when the assignment ended. The claimant was assigned to work at the Ben Rider Company as a general laborer/press operator and was being paid by the hour. His immediate contact person was DES Staffing was Kathy Davis.

On May 11, 2012, Mr. Barnes was informed by Kathy Davis that his assignment at Ben Rider had come to an end. The claimant inquired at that time as to whether there was another work assignment available. The claimant was offered a second-shift work assignment that day but was unable to accept it because of child care issues that day. The claimant had initially indicated to the temporary employment service that he could only work daytime shifts.

Mr. Barnes again contacted DES Staffing via telephone the following Monday, May 14, 2012, inquiring about whether the temporary employer had any first-shift work available.

It is the employer's position that the company records do not show contact by the claimant on May 11, 2012, or that there was any contact within three consecutive business days. It is the employer's position that the claimant contacted the employer but did not inquire about work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment with 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 a temporary assignment. Mr. Barnes testified under oath and testified with specificity that he contacted a particular contact person at DES Staffing on May 11, 2012, and on May 14, 2012, indicating his availability for work and looking for job assignments. In contrast, the evidence in support of the employer that Mr. Barnes did not seek work assignments is hearsay in nature. Although hearsay is admissible in administrative proceedings, it is not accorded the same weight as sworn, direct testimony. The administrative law judge finds the claimant credible and finds that his testimony is not inherently improbable.

Because the temporary employer did have notice of the claimant's availability within three working days, the administrative law judge concludes that the claimant left his employment at the conclusion of his most recent work assignment with good cause attributable to the employer. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated June 13, 2012, reference 09, is reversed. The claimant left employment with good cause attributable to the employer. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw