

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MAREW M TEGEGNE

Claimant

REMEDY INTELLIGENT STAFFING INC

Employer

APPEAL 21A-UI-23977-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/19/21

Claimant: Respondent (4)

Iowa Code § 96.5(1)j – VQ – Temporary employment firm

Iowa Code § 96.5(2)a – Discharge for Misconduct

Iowa Code § 96.5(1) – Voluntary Quitting

Iowa Code § 96.4(3) – Ability to and Availability for Work

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

Employer filed an appeal from the October 14, 2021 (reference 01) unemployment insurance decision that allowed benefits finding claimant was employed with Remedy Intelligent Staffing, a temporary employment firm, until August 30, 2021 and notified employer within three days of his assignment ending. The parties were properly notified of the hearing. A telephone hearing was held on December 17, 2021. Claimant participated. Employer participated through Aaron Elliott, Personnel Supervisor. Employer's Exhibits 1 – 3 were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant's separation was a discharge for disqualifying job-related misconduct or a voluntary quit without good cause attributable to employer.

Whether claimant made a timely request for a new job assignment.

Whether claimant is able to and available for work.

Whether claimant was overpaid benefits.

Whether claimant should repay those benefits and/or whether employer should be charged based upon its participation in the fact-finding interview.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant was employed full time by Remedy Intelligent Staffing, Inc, a temporary employment firm, from February 5, 2021 until August 26, 2021. During that time, claimant had more than one assignment. Claimant's most recent assignment was as a full-time General Laborer for G & R Integration in Des Moines, Iowa.

On or about August 19, 2021, employer notified claimant that G & R Integration decided to use a different temporary employment firm for staffing effective August 26, 2021. Employer told claimant that he could either (1) end his employment with employer and continue working at G & R Integration through the new temporary employment firm or (2) continue his employment with employer and end his assignment at G & R Integration. Claimant notified employer prior to August 26, 2021 that he wished to remain with employer and requested a new assignment. Employer did not have another assignment for claimant within his availability.

Claimant became ill on or about September 9, 2021 and remained ill for three weeks. During that time, claimant was not able to work. Claimant filed an initial claim for benefits effective September 19, 2021 and ongoing weekly claims from September 19, 2021 through October 16, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

Iowa Code section 96.5(1)(j) provides:

An individual shall be disqualified for benefits

1. 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.

Iowa Admin. Code r. 871-24.26(15) 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:

Employee of temporary employment firm.

a. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm within three days of completion of an

employment assignment and seeks reassignment under the contract of hire. The employee must be advised by the employer of the notification requirement in writing and receive a copy.

b. The individual shall be eligible for benefits under this subrule if the individual had good cause for not contacting the employer within three days and did notify the employer at the first reasonable opportunity.

c. Good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business; blinding snow storm; telephone lines down; employer closed for vacation; hospitalization of the claimant; and other substantial reasons.

d. Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer or any other currently accepted means of communications. Working days means the normal days in which the employer is open for business.

On or about August 19, 2021, employer notified claimant that his assignment at G & R Integration would be ending effective August 26, 2021. Between August 19, 2021 and August 26, 2021, claimant requested a new assignment from employer. Employer did not have work for claimant within his availability. Therefore, claimant's separation is not disqualifying.

Because claimant's separation is not disqualifying, the issues of overpayment, repayment and chargeability are moot.

The next issue to be determined is whether claimant is able to and available for work. For the reasons that follow, the administrative law judge concludes:

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1), (2) provide, in pertinent part:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.22(2) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

An individual claiming benefits has the burden of proof that he is able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

Claimant was ill and unable to work from September 9, 2021 through September 30, 2021. Claimant recovered from his illness and was able to work effective September 31, 2021. Claimant has not established that he was able to and available for work for the benefit weeks between September 19, 2021 and October 2, 2021. Claimant was able to and available for work effective October 3, 2021.

Accordingly, benefits are denied from September 19, 2021 through October 2, 2021; benefits are allowed effective October 3, 2021, provided claimant is otherwise eligible.

DECISION:

The October 14, 2021 (reference 01) unemployment insurance decision is modified in favor of appellant. Claimant's separation is not disqualifying; claimant is not able to and available for work from September 9, 2021 through September 30, 2021. Therefore, benefits are denied from September 19, 2021 through October 2, 2021; benefits are allowed effective October 3, 2021, provided claimant is otherwise eligible. The issues of overpayment, repayment and charges are moot.



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December 28, 2021
Decision Dated and Mailed

acw/acw