

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENNIS A PETRA
Claimant

APPEAL NO. 09O-UI-08463-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WESTAFF USA INC
Employer

**Original Claim: 02/22/09
Claimant: Appellant (2)**

Iowa Code section 96.5(1)(j) – Separation from Temporary Employment
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

This matter is before the administrative law judge based on the Employment Appeal Board's remand for rehearing. Dennis Petra had appealed from an unemployment insurance decision dated March 30, 2009, reference 03, that denied benefits in connection with a January 31, 2008 separation. A telephone hearing was scheduled for June 29, 2009. Neither party responded to the hearing notice instructions and neither party participated in the hearing. Based on the parties' failure to participate in the hearing, the administrative file, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Decision on the record.

Whether Mr. Petra separated from the Westaff USA, Inc., for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. A telephone hearing was scheduled for June 29, 2009 and notice was mailed to the parties on June 16, 2009. Neither party responded to the hearing notice instructions and neither party participated in the hearing. Neither party requested a postponement of the hearing as required by the hearing notice. There is no evidence that either party's hearing notice was returned by the postal service as undeliverable for any reason.

The administrative law judge has conducted a careful review of the administrative file to determine whether the unemployment insurance decision should be affirmed. The employer is a temporary employment agency. Mr. Petra began his employment through Westaff USA, Inc., in November 2006 and last performed work for the employer on January 31, 2008. Thereafter, Mr. Petra did not make further contact with the employer and the employer deactivated Mr. Petra from its computer system.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 26.8(3), (4) and (5) provide:

Withdrawals and postponements.

(3) If, due to emergency or other good cause, a party, having received due notice, is unable to attend a hearing or request postponement within the prescribed time, the presiding officer may, if no decision has been issued, reopen the record and, with notice to all parties, schedule another hearing. If a decision has been issued, the decision may be vacated upon the presiding officer's own motion or at the request of a party within 15 days after the mailing date of the decision and in the absence of an appeal to the employment appeal board of the department of inspections and appeals. If a decision is vacated, notice shall be given to all parties of a new hearing to be held and decided by another presiding officer. Once a decision has become final as provided by statute, the presiding officer has no jurisdiction to reopen the record or vacate the decision.

(4) A request to reopen a record or vacate a decision may be heard ex parte by the presiding officer. The granting or denial of such a request may be used as a grounds for appeal to the employment appeal board of the department of inspections and appeals upon the issuance of the presiding officer's final decision in the case.

(5) If good cause for postponement or reopening has not been shown, the presiding officer shall make a decision based upon whatever evidence is properly in the record.

The administrative law judge has carefully reviewed evidence in the record and concludes that the unemployment insurance decision previously entered in this case is in error and should be reversed.

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 administrative file documents provide insufficient evidence to establish that the employer had an end-of-assignment notification policy that complied with the requirements of Iowa Code section 96.5(1)(j) or that the employer took further steps to notify Mr. Petra of the policy as required by the statute. Absent such evidence, Mr. Petra's decision not to seek further assignments through the employer would not disqualify him for unemployment insurance benefits.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Petra's January 31, 2008 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Mr. Petra is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Petra.

DECISION:

The Agency representative's March 30, 2009, reference 03, decision is reversed. The claimant's separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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