

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TED WATSON
Claimant

APPEAL NO. 10A-UI-17660-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

OC: 12/20/09
Claimant: Respondent (1)

Iowa Code Section 96.5(1)(j) – Separation From Temporary Employment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 17, 2010, reference 06, decision that allowed benefits. After due notice was issued, a hearing was held on February 9, 2011. Claimant participated. Sarah Fiedler represented the employer. Exhibit One was received into evidence. The administrative law judge took official notice of the Agency's administrative record concerning the additional claim for benefits established November 7, 2010, benefits disbursed to the claimant in connection with the additional claim, and base period employers for purposes of the claim year that started December 20, 2009.

ISSUE:

Whether the claimant's separation from the temporary employment agency was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency. Ted Watson registered for work with Team Staffing Solutions in May 2010. Mr. Watson started a full-time, temporary employment work assignment at Metro Group in August 12, 2010 and performed work in the assignment until October 15, 2010. Mr. Watson generally worked Monday through Friday. Metro Group did not assign Mr. Watson any work hours for the week of Monday, October 18 through Friday, October 22, 2010. During that time, Mr. Watson's foreman/supervisor at Metro Group was on vacation. No one from Metro Group or Team Staffing Solutions had notified Mr. Watson that the assignment was done, that he was laid off, or that he was discharged from the assignment. Mr. Watson's name was still on the posted list of employees at the Metro facility. Mr. Watson assumed there would be work hours the following week. But for the week of Monday, October 25 through Friday, October 29, 2010, Mr. Watson again observed he had been given no work hours at Metro Group. Mr. Watson again assumed more work hours would be forthcoming because no one had told him he was laid off or discharged from the assignment. On or about October 29, Mr. Watson went to Metro Group and noted that he was no longer amongst the posted list of employees.

Team Staffing Solutions noted on October 20, 2010 that it had not received a weekly time sheet for Mr. Watson from Metro Group. Team Staffing Solutions contacted Metro Group and a representative at Metro Group told the Team Staffing Solutions representative that Metro Group had notified a group of temporary employees that they were no longer needed and that they needed to contact Team Staffing Solutions. Metro Group had provided no such notice to Mr. Watson.

On Tuesday, November 2, 2010, Mr. Watson contacted Team Staffing Solutions in search for new employment. Only then did Mr. Watson hear from the Team Staffing Solutions representative that he had indeed been laid off from Metro Group. Mr. Watson established an additional claim for unemployment insurance benefits that was effective November 7, 2010 and received benefits for the weeks ending November 13, 20, and 27 and December 4, 2010. Mr. Watson started back with Metro Group on December 6, 2010 and, accordingly, discontinued his claim for unemployment insurance benefits.

In May 2010, when Mr. Watson began his association with Team Staffing Solutions, he signed and received a copy of a Notification Requirement Availability for Work Assignments form. The form indicated that upon *completion* of an assignment Mr. Watson was obligated to contact Team Staffing Solutions within three working days to indicate his availability for a new work assignment.

Team Staffing Solutions is not a base period employer for purposes of the claim year that started for Mr. Watson on December 20, 2009 and that came to an end on December 18, 2010.

REASONING AND CONCLUSIONS OF LAW:

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 employer's end of assignment notice requirement complies with the requirements of the applicable statute and the employer appropriately provided a copy of the document to Mr. Watson.

The weight of the evidence establishes that Mr. Watson did not receive notice that the assignment at Metro Group had ended until November 2, 2010, when he contacted Team Staffing Solutions. Neither Metro Group nor Team Staffing Solutions had previously notified Mr. Watson that the assignment had ended. Absent sufficient evidence to establish prior notification, the evidence establishes that Mr. Watson made timely contact with Team Staffing Solutions to indicate his availability for a new assignment. Notice of the lay-off and the request for a new assignment occurred simultaneously in connection with contact initiated by Mr. Watson. The fact that Mr. Watson did not establish his additional claim for benefits until November 7, 2010, supports the other evidence indicating his first notice of the lay-off came through his call to Team Staffing on November 2, 2010.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Watson's separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Mr. Watson is eligible for benefits, provided he is otherwise eligible. Because the employer is not a base period employer for purposes of the claim year that ran from December 20, 2009 through December 18, 2010, the employer has not been charged for the benefits paid for the period of November 7, 2010 through December 4, 2010. However, nothing about the October 15, 2010 separation would

prevent the employer from being assessed for benefits in connection with a new claim established on or after December 19, 2010.

DECISION:

The Agency representative's December 17, 2010, reference 06, decision is affirmed. The claimant's separation from the temporary employment agency on October 15, 2010 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 under the circumstances outlined above.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs