IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JESSIE J MARSHALL
Claimant

AVENTURE STAFFING & PROFESSIONAL SERVICES
Employer

APPEAL NO. 11A-UI-06147-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/27/11
Claimant: Appellant (4-R)

Iowa Code Section 96.5(1) – Voluntary Quit
871 IAC 24.27 – Voluntary Quit from Part-time Employment

STATEMENT OF THE CASE:

Jessie Marshall filed a timely appeal from the April 28, 2011, reference 03, decision that denied benefits in connection with a February 20, 2011 separation from the above employer. After due notice was issued, a hearing was held on June 6, 2011. Mr. Marshall participated. Kayla Neuhaufen, Human Resources Assistant, represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 11A-UI-06146-JTT. Exhibits One, Two and Three were received into evidence.

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. The employer operates two ostensibly distinct temporary employment businesses out of the same office: All In a Day, L.L.C. and Aventure Staffing & Professional Services. All In a Day provides day labor, whereas Aventure Staffing & Professional Services provides work assignments that *might* last more than a day. The businesses share management and staff.

Jessie Marshall performed work for both businesses. Mr. Marshall commenced working for Aventure Staffing & Professional Services on July 23, 2010 and completed a one-day assignment at the Tyson Events Center in Sioux City. Months later, Aventure Staffing offered Mr. Marshall a second, one-day assignment at the Tyson Events Center for February 19, 2011. Mr. Marshall accepted the assignment and then failed to appear for the assignment.

Mr. Marshall commenced working for All In a Day on July 28, 2010, and completed a series of one-day assignments at Sadex on July 28, 29, and 30, 2010. Mr. Marshall then completed a

one-day assignment for another company on August 2, 2010. Months later, Mr. Marshall completed another series of one-day assignments at Sadex on February 16, 17 and 18.

On February 19, 2011, Mr. Marshall's girlfriend notified the employer and alleged that Mr. Marshall had been injured outside of work, would not be able to appear for the one-day Aventure Staffing assignment at the Tyson Events Center and that he would make contact with the employer the following week.

There was no further contact between the parties. This was in part because Mr. Marshall had relocated to Chicago.

On July 21, 2010, the employer had Mr. Marshall execute documents that reference only Aventure Staffing as the employer. One of the documents referenced a requirement that Mr. Marshall notify Aventure Staffing within three days of completion of each employment assignment. The policy indicated that failure to make contact would be deemed a voluntary quit and could lead to unemployment ineligibility. The end-of-assignment notice requirement appeared at the bottom on a document concerning other matters. Another matter set forth on the document concerned whether Mr. Marshall had a personal vehicle and was willing to use it in connection with work assignments as needed. Another matter set forth on the document was a release of Aventure Staffing customers from liability for injuries and occurring during the course of the work and an agreement to seek remedy only through Aventure Staffing. A second document contained multiple policies that again referenced the end-of-assignment notice requirement amongst other material at the bottom of the document.

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.

This particular case, and the particular decision on appeal in this case, concern only the separation from Aventure Staffing & Professional Services. The documents Mr. Marshall executed with the employer reference that business. The policy materials the employer had Mr. Marshall execute do not comply with the statute's requirement of a clear and concise statement set forth on a document by itself, signed by the claimant, and provided to the claimant. In the absence of a policy that complies with the temporary employment statute, the employer cannot claim the benefit of the temporary employment statute to deny benefits to Mr. Marshall.

Nonetheless, the evidence establishes that Mr. Marshall voluntarily quit what was essentially part-time, on-call employment so that he could relocate to Chicago.

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

A worker who voluntarily quits employment to relocate to a new locality is presumed to have quit without good cause attributable to the employer. See 871 IAC 24.25(2).

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times his weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

Mr. Marshall had accepted an assignment through Aventure Staffing and the assignment was for February 19, 2011. Mr. Marshall had his girlfriend provide the employer with a reason why he could not appear for the assignment. The evidence provides little reason to give much weight to the girlfriend's statement to the employer that Mr. Marshall could not appear because he had been injured outside of work. The evidence indicates instead that Mr. Marshall intended to separate from the employment, without completing the assignment he had agreed to complete, and that he voluntarily separated from the employment so the he could relocate to Chicago. The evidence does not establish that Mr. Marshall relocated so that he could care for a sick family member. He just relocated. The quit was without good cause attributable to the employer. Accordingly, Aventure Staffing & Professional Services will not be charged for benefits paid to Mr. Marshall. Mr. Marshall is not eligible for unemployment insurance benefits *based on wages earned through Aventure Staffing* until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Marshall remains otherwise eligible for benefits, provided he meets all other eligibility requirements.

This matter will be remanded for determination of Mr. Marshall's eligibility for reduced benefits. The remand should also address whether Mr. Marshall has been available for work.

DECISION:

The Agency representative's April 28, 2011, reference 03, decision is modified as follows. The claimant voluntarily quit the part-time, on-call employment effective February 19, 2011, to relocate to a new locality. The quit was without good cause attributable to the employer. Aventure Staffing's account with Workforce Development will not be charged for benefits paid to the claimant. The claimant is not eligible for unemployment insurance benefits *based on wages earned through Aventure Staffing* until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount since separating from that employer. The claimant remains otherwise eligible for benefits, provided he meets all other eligibility requirements.

This matter will be remanded for determination of claimant's eligibility for reduced benefits based on base period employment other than Aventure Staffing. The remand should also address whether the claimant has been available for work.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/css