

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREW W LOUCK
Claimant

APPEAL NO. 07A-UI-07316-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS
Employer

OC: 06/24/07 R: 04
Claimant: Appellant (2-R)

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

STATEMENT OF THE CASE:

Andrew Louck filed a timely appeal from the July 25, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 15, 2007. Mr. Louck participated. Sarah Fiedler, Administrative Assistant in Human Resources, represented the employer. The administrative law judge took official notice of the documents the parties submitted for the fact-finding interview.

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: Andrew Louck commenced his employment relationship with Team Staffing Solutions in October 2000 and had seven assignments through the temporary employment agency. All but one of those assignments were at Heinz USA in Muscatine. The assignments at Heinz USA were part-time, on-call. The final assignment at Heinz commenced on October 11, 2006. Mr. Louck last performed work for Heinz USA on January 26, 2007. On the morning of February 12, 2007, Team Staffing contacted Mr. Louck and asked him to work the second shift that day. Mr. Louck initially agreed to work the shift, but called back later that morning to indicate would not work shift because the weather was expected to worsen later in the day and he did not want to drive in adverse weather later in the day. Mr. Louck was also scheduled to work on February 15, 2007, but called in an absence due to a concern about fog. On February 16, Mr. Louck called Team Staffing and left a message for Sarah Dixon, the team staffing Account Executive in charge of the Heinz USA account. Mr. Louck was inquiring about additional shifts at Heinz USA. Mr. Louck did not receive a return phone call from Ms. Dixon. On February 28, Team Staffing contacted Mr. Louck about working that day, but Mr. Louck did not return the call until the next day. Thereafter, there was no more contact until April 11, when Mr. Louck contacted Team Staffing and asked about shifts at Heinz USA. Megan Randall informed Mr. Louck that Heinz USA was unwilling to have Mr. Louck return to work there because of his attendance.

On April 25, 2005, Team Staffing had Mr. Louck execute a notification agreement. The document notified Mr. Louck of his obligation to notify the employer within three working days of the end of an assignment to request a new assignment. This policy statement was separate from any other work rules. Team Staffing provided Mr. Louck with a copy of the policy.

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 greater weight of the evidence indicates that Team Staffing had a notification policy that complied with the requirements of 96.5(1)(j), that Team Staffing executed a notification agreement with Mr. Louck, and provided Mr. Louck with a copy. The evidence indicates that Mr. Louck was absent from the Heinz USA assignment for personal reasons on February 12 and 15, 2007. The greater weight of the evidence does not establish driving conditions that would have hindered Mr. Louck's ability to appear for his February 12 and 15 shifts. Though Mr. Louck did not appear for these two shifts, Team Staffing took no steps to discharge Mr. Louck from the assignment or the employment with Team Staffing. The greater weight of the evidence indicates that Mr. Louck called Sarah Dixon, Team Staffing Account Executive, on February 16 to inquire about additional shifts with Heinz USA. Mr. Louck fulfilled his end of the notification agreement by making this contact. The evidence indicates that Team Staffing did not have additional shifts available for Mr. Louck at that time and did not respond to his call.

The administrative law judge notes that the employer's sole witness lacked personal knowledge of Mr. Louck's employment relationship with Team Staffing and testified from notes prepared by others who had contact with Mr. Louck in the course of the employment. The administrative law judge notes that the employer had the ability to provide testimony through Sarah Dixon or the Team Staffing secretary, but produced testimony from neither. When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

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

In his appeal letter, Mr. Louck had challenged the timeliness of the employer's protest. However, this challenge was without merit. The notice of claim/protest form clearly establish that the employer's protest was timely. See 96.6(2).

The evidence in the record raises the question of whether Mr. Louck has been available for work and actively and earnestly searching for work since establishing his claim for benefits.

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 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, 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".

This matter will be remanded to a claims representative so that these issues can be addressed.

DECISION:

The Agency representative's July 25, 2007, reference 01, 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 she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant. The matter is remanded for determination of whether the claimant has been available for work and actively and earnestly seeking employment since establishing his claim for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw