

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES C HINES

Claimant

APPEAL NO. 15A-UI-03299-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC

Employer

OC: 12/21/14

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

James Hines filed a timely appeal from the March 9, 2015, reference 03, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that he had voluntarily quit employment with Team Staffing Solutions, Inc. on February 17, 2015 without good cause attributable to that employer by failing to contact the employer within three working days of the end of the assignment to request new assignment. After due notice was issued, a hearing was held on April 9, 2014. Mr. Hines participated. Sarah Fiedler represented the employer. Exhibits One and A through D were received into evidence. The administrative law judge took official notice of the Agency's administrative record (DBRO) that indicated a February 20, 2015 application for benefits that resulted in an February 15, 2014 effective additional claim date. The administrative law judge took official notice, absent objection from the claimant, of the administrative law judge's prior familiarity with the employer's end-of-assignment notification policy.

ISSUE:

Whether the claimant's February 17, 2015 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: Team Staffing Solutions, Inc. is a temporary employment agency. James Hines commenced getting work through that employer in February 2014. Mr. Hines started a full-time temporary work assignment at J M Eagle in August 2014 and completed the assignment on February 16, 2015. Mr. Hines had been absent a few days prior to the end of the assignment based on an bronchitis, sinus infection and blood pressure issues but had returned to the assignment to complete full shifts on February 15 and 16. On February 17, 2015, Team Staffing Account Manager Tasha Phillips notified Mr. Hines that the assignment was complete. During that telephone call, Mr. Hines referenced the recent illness that he was still dealing with. At the time Mr. Hines last performed work for J M Eagle on February 16, he was at the end of a seven-day shift rotation. The next two days would ordinarily have been Mr. Hines scheduled days off from the assignment. During the telephone call with the Team Staffing representative on Tuesday, February 17, Mr. Hines indicated that unless the employer had a new assignment immediately available for him, he would like a day or two to recover from his illness.

On Friday, February 20, Team Staffing Account Manager Mary Kirschner, telephoned Mr. Hines and left a message regarding a potential new assignment. Mr. Hines was at Workforce Development applying for benefits at the time he received the voicemail message about the new assignment. Mr. Hines went to the employer's office, but was not able to get there in time before the office closed. Mr. Hines followed up with Team Staffing the next week, but the assignment was no longer available. While Mr. Hines indicates he followed up on Monday, February 23, the employer witness asserts the contact did not occur until February 25.

On February 24, 2015, Sarah Fiedler, Team Staffing Human Resources Generalist, corresponded with Tasha Phillips regarding her conversation with Mr. Hines a week earlier. As part of that correspondence, Ms. Fiedler said "I need to know if he asked you for other work when you told him his assignment was over." Ms. Phillips replied "He said he was not feeling the best and would call and check in for work this week if he was better."

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

Iowa Admin. Code r. 871-24.26(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 has an end-of-assignment policy that complies with the requirements of the statute. Mr. Hines had signed the policy and the employer had provided Mr. Hines with a copy of the policy. Accordingly, Mr. Hines was obligated to contact the employer within three working days of the end of the assignment to indicate his availability for an additional assignment. The weight of the evidence indicates that Mr. Hines satisfied that contact requirement at the time he was notified that the assignment was done. The employer has not presented sufficient evidence to rebut Mr. Hines' assertion that a discussion about additional work took place on that day. The employer had the ability to present testimony through Ms. Phillips, but elected not to present such testimony. 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). The employer's email correspondence, a week after the contact, is insufficient to rebut Mr. Hines' testimony from personal knowledge about the conversation. Mr. Hines had one person's affairs to be concerned with, his own, whereas Ms. Phillips likely had many conversations with many Team Staffing employees during the same period that included her contact with Mr. Hines. Because Mr. Hines satisfied the contact requirement set forth in the code, his February 17, 2015 separation was for good cause attributable to the employer.

The evidence further supports Mr. Hines' assertion that he received notice of another possible assignment by voicemail message on Friday, February 20, 2015 and that he made a good faith effort that day to contact the employer to indicate his interest in that assignment. Mr. Hines' assertion regarding when and how he learned of a new assignment, and his attempt to immediately follow up on the information, is bolstered by the Workforce Development records that indicate Mr. Hines did indeed make his additional application for benefits that day. That good faith effort to make contact with the employer on February 20, 2015 and the follow up effort would have satisfied the contact requirement under the statute.

DECISION:

The March 9, 2015, reference 03, decision is reversed. The claimant's February 17, 2015 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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