

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEROME C BERTELLI
Claimant

APPEAL 19A-UI-09103-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

OC: 10/27/19
Claimant: Appellant (2R)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment

STATEMENT OF THE CASE:

On November 19, 2019, Jerome Bertelli (claimant) filed a timely appeal from the November 15, 2019 (reference 01) unemployment insurance decision that determined claimant was not eligible to receive unemployment insurance benefits.

A telephone hearing was held on December 12, 2019. The parties were properly notified of the hearing. Claimant participated personally. Team Staffing Solutions Inc. (employer) participated by HR Generalist Sarah Fiedler.

Employer's Eexhibits 1 and 2 were admitted.

ISSUE(S):

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause? Did the claimant make a timely request for another job assignment?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant was a temporary employee of employer. His first and only assignment was at Siemens. He started there on July 3, 2019, and worked full-time. That assignment ended on October 28, 2019. Employer has a three-day notice policy, which claimant signed and received June 26, 2019. Exhibit 1. The notice complies with the requirements of the applicable Iowa Code section.

T.J. Lematty, an agent of employer, contacted claimant the morning of October 29 to inform him the assignment had ended. At that time, claimant asked Lematty to attempt to get some personal items of his back from Siemens. Lematty told claimant he would attempt to do so and then get back in touch with him. Claimant did not ask Lematty about reassignment at that time.

Claimant expected he and Lematty would discuss that further when Lematty called him back. However, claimant did not hear further from Lematty. Claimant reached out to employer the following day, October 30, and requested a new assignment.

Employer provided a log of employer's contacts with claimant. Exhibit 2. It does not document any contact between claimant and employer after the call with Lematty on October 29. Employer did not make available for the hearing Lematty or anyone else with direct, first-hand knowledge of claimant's contacts with employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the November 15, 2019 (reference 01) unemployment insurance decision that determined claimant was not eligible for benefits is REVERSED.

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause? Did the claimant make a timely request for another job assignment?

Iowa Code section 96.5(1)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. (1) 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.

- (2) 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.

- (3) For the purposes of this paragraph:

- (a) "*Temporary employee*" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

- (b) "*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.

It is the duty of the administrative law judge as the trier of fact in this case to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007).

The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

Claimant credibly testified that he contacted employer within three days of learning of the end of his assignment to request placement in a new assignment. While ~~E~~employer's Exhibit 2 does not contain a record of that contact, the administrative law judge finds claimant's testimony based on his first-hand knowledge of that contact to be more credible and reliable than ~~E~~employer's ~~E~~exhibit. As noted above, employer did not make available for the hearing Lematty or anyone else with direct, first-hand knowledge of claimant's contacts with employer. While employer is certainly not required to make available witnesses with first-hand knowledge, the administrative law judge does give greater weight to claimant's testimony because of his first-hand knowledge of the facts in dispute.

Furthermore, while claimant did not affirmatively notify employer of his assignment ending, it would be absurd to read the applicable law as requiring such a notification in this instance. Employer had knowledge of the end of the assignment prior to claimant and notified him of its ending. The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of each temporary assignment so they may be reassigned and continue working. Employer was on notice that the assignment had concluded.

As the administrative law judge finds claimant did contact employer within three days of learning of the end of his assignment and requested placement in a new assignment, he did not voluntarily separate himself from employment. Benefits are allowed, provided he is otherwise eligible.

However, because there is a question as to whether claimant refused an offer of suitable work, this matter must be remanded to the Benefits Bureau for an investigation and determination as to that issue.

DECISION:

The November 15, 2019 (reference 01) unemployment insurance decision that determined claimant was not eligible for benefits is REVERSED. Claimant is eligible for benefits, so long as he meets all other eligibility requirements.

REMAND:

This matter is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination as to whether claimant refused an offer of suitable work.

Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

Decision Dated and Mailed

abd/scn