

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMARA BEH
Claimant

APPEAL NO: 11A-UI-01913-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

OC: 12/19/10

Claimant: Appellant (4)

Section 96.5-1-j – Temporary Employment
871 IAC 24.26(15) – Temporary Employment
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Tamara Beh (claimant) appealed a representative's February 15, 2011 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits in conjunction with her employment with Team Staffing Solutions, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 14, 2011. This appeal was consolidated for hearing with one related appeal, 11A-UI-01914-DT. The claimant participated in the hearing. Sarah Fiedler appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was there a disqualifying separation from employment? Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The employer is a temporary staffing agency. The claimant began taking assignments through the employer on July 12, 2010. She initially worked full time as a production laborer at the employer's Davenport, Iowa business client on a second shift position. Her last day on that assignment was December 22, 2010. The assignment ended that date because the business client deemed the assignment to be completed. The business client and the claimant both informed the employer on December 20 that the assignment would be ending on December 22. The employer's Davenport office manager spoke to the claimant on December 20. She noted that the claimant indicated she would not be available for further work until January 3, 2011 as she was planning on going to go out of town; the employer advised the claimant it did not expect any work to become available until after New Years. However, on December 27 the claimant went into the employer's Davenport office and indicated that she had decided not to go out of town, so that she was available for work, if the employer had any work for her, which it did not at

that time. The claimant was again told there would not be work until after New Years. She again checked in for work on January 3, 2011, but there was still no work immediately available.

The claimant then was offered and began another assignment with another business client as of January 18, 2011. She worked full time as a custodian on the first shift and a rate of \$10.00 per hour. Her last day on that assignment was February 15, 2011. The business client ended the assignment as of that time for reasons the employer does not assert constitute misconduct on the part of the claimant. The claimant immediately contacted the employer for additional assignments after the ending of that assignment.

The claimant established an unemployment insurance benefit year effective December 19, 2010. Her weekly benefit amount was calculated to be \$192.00. In addition to other weeks, she filed weekly claims seeking benefits for the weeks ending January 22, January 29, February 5, February 12, and February 19, reporting the receipt of wages for those weeks in the amounts of \$0.00, \$360.00, \$400.00, \$360.00, and \$80.00, respectively.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the employer or either of the business clients ended the claimant's assignments and effectively discharged her for reasons establishing work-connected misconduct as defined by the unemployment insurance law. An employee of a temporary employment firm who has been given proper notice of the requirement can be deemed to have voluntarily quit his employment with the employer if she fails to contact the employer within three business days of the ending of the assignment in order to notify the employer of the ending of the assignment and to seek reassignment. Iowa Code § 96.5-1-j. The intent of the statute is to avoid situations where a temporary assignment has ended and the claimant is unemployed, but the employer is unaware that the claimant is not working could have been offered an available new assignment to avoid any liability for unemployment insurance benefits.

Where a temporary employment assignment has ended by the completion of the assignment of and the employer is aware of the ending of that assignment, the employer is already on "notice" that the assignment is ended and the claimant is available for a new assignment; where the claimant knows that the employer is aware of the ending of the assignment, she has good cause for not separately "notifying" the employer. 871 IAC 24.26(15). Here, however, the claimant did in fact notify the employer both of the impending ending of the assignment on December 20 and on December 27 within three business days (given the holiday on December 24) of the ending of the assignment, and indicated an interest in reassignment both times; on both occasions she was advised additional assignments would not be available until after the holidays.

Regardless of whether the claimant continued to seek a new assignment, the December 22, 2010 separation is deemed to be completion of temporary assignment and not a voluntary leaving. The employer has not challenged the claimant's eligibility based on the ending of the assignment on February 15, 2011. In terms of separation issues, benefits are allowed, if the claimant is otherwise eligible.

The next and more important issue in this case is whether the claimant was able and available for work in all weeks for which she was seeking unemployment insurance benefits. With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, available for work, and be earnestly and actively seeking work. Iowa Code § 96.4-3.

The employer asserts that the claimant was not able and available for work for the week ending January 1, 2011 as she was out of town. If a claimant is out of town the majority of a regular workweek, that claimant is not able and available for work. 871 IAC 24.23(25). However, the employer relies on second-hand information for this conclusion. The administrative law judge finds the claimant's first-hand testimony that she was not out of town and was available for work that week to be more credible. Benefits are allowed for that week.

There was also a conclusion that the claimant was not able and available for work as of January 16, 2011 as she was fully employed after that date. If a claimant is fully employed, she is not able and available for work that week, unless she is earning less than her regular hours and wages and earns less than her weekly benefit amount plus \$15.00 in some employment. 871 IAC 24.23(23); Iowa Code § 96.19-38-b. To be eligible for benefits for any particular week in which she is not fully employed, the claimant must file a weekly claim for that week reporting her wages from all employers earned (not paid) for that week; the amount of her eligibility will then be determined pursuant to the formula set out by the statute. 871 IAC 24.52(8); Iowa Code § 96.3-3.

For the benefit week ending January 19, the claimant was employed on four of the five days, and so most likely earned more than \$192.00 plus \$15.00. She failed to report her wages earned on her claim for that week. She was also fully employed and earned more than \$207.00 for the benefit weeks ending January 22, January 29, February 5, and February 12, and so was not partially unemployed and not eligible to receive unemployment insurance benefits during these five weeks. For the benefit week ending February 19, she only worked a part of that week, and so was only partially employed that week. Likewise, for weeks after February 19 the employer was not providing the claimant with substantially the same employment as it previously provided. Consequently, the claimant is qualified to receive full or partial unemployment insurance benefits effective February 13, 2011, provided she was otherwise eligible.

DECISION:

The representative's February 15, 2011 decision (reference 01) is modified in favor of the claimant. The claimant's separation was not a voluntary quit but was the completion of a temporary assignment. The claimant was able to work and available for work and eligible for unemployment insurance benefits for the week ending January 1, 2011. She was also able and available for work and eligible for full or partial unemployment insurance benefits for other weeks beginning February 13, 2011. Benefits are allowed, if the claimant is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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