

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOE L PETTIT
Claimant

APPEAL NO. 15A-UI-00613-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LABOR READY MIDWEST INC
Employer

OC: 12/14/14
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 6, 2015, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged, based on an agency conclusion that the claimant had been discharged on December 30, 2014 for no disqualifying reason. After due notice was issued, a hearing was held on February 9, 2015. Claimant Joe Pettit participated. Megan Papesh, Branch Manager, represented the employer. Exhibits One and Two were received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant.

ISSUE:

Whether the claimant's purported separation from the temporary employment agency on or about December 30, 2014 was for good cause attributable to the employer. It was.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Labor Ready Midwest, Inc., is a temporary employment agency. The claimant began receiving day-labor assignments from the employer in July 2013. At that time, the employer had the claimant sign an acknowledgement of his obligation to contact the employer within three working days of the end of an assignment or risk being disqualified for unemployment insurance benefits. The employer did not provide the claimant with a copy of the policy the employer had the claimant sign. The claimant completed a day-labor assignment at Linder Tire Wholesale on December 30, 2014. The next day, the employer sent Mr. Pettit a broadcast email asking who was interested in working a particular day-labor assignment that day. The claimant responded that he wanted to work the assignment. The claimant was not selected for the assignment. The claimant subsequently performed additional work for the employer in day labor assignments at Thomas L. Cardella.

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 policy statement satisfies the statutory requirement of a clear and concise statement of the claimant's obligation to contact the employer within three working days of the completion of an assignment to request a new assignment. However, the employer failed to provide the claimant with a copy of the end-of-assignment policy he signed. With that omission, the employer failed to satisfy the requirements of Iowa Code section 96.5(1)(j). Because the employer failed to satisfy the requirements of the statute, the employer cannot claim the benefit of the statute and the statute does not apply. The claimant fulfilled his contract of hire each time he completed a day-labor assignment. Any decision on his part not to seek further assignments from the employer would not disqualify him for benefits. However, the claimant did not decide to forego additional assignments. Instead, the claimant was in touch with the employer the next day requesting work in another assignment. The claimant's December 30, 2014 separation from the employer was for good cause attributable to the employer. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

DECISION:

The January 6, 2015, reference 01, decision is affirmed. The claimant's separation from the temporary employment agency on December 30, 2014 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

jet/pjs