

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREW A ANGSOUVAN
Claimant

APPEAL NO. 14A-UI-03845-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMEDY INTELLIGENT STAFFING INC
Employer

**OC: 03/02/14
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Andrew Angsouvan filed a timely appeal from the April 2, 2014, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits based on an agency conclusion that Mr. Angsouvan voluntarily quit without good cause attributable to the employer on March 2, 2014. After due notice was issued, a hearing was held on April 30, 2014. Ms. Angsouvan participated. Julie Coughlin represented the employer.

ISSUE:

Whether Mr. Angsouvan separated from the temporary work assignment and/or from the temporary employment agency for a reason that disqualifies him for benefits or that relieves the employer of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Remedy Intelligent Staffing, Inc., is a temporary employment firm. The employer provides temporary workers to General Mills in Cedar Rapids. On a daily basis, the employer sends more workers to General Mills than will be needed by General Mills. The employer does this so that it may fulfill its contract with General Mills despite the failure of one or more temporary workers' failure to appear at General Mills. If General Mills does not need a particular worker on a particular day, General Mills dismisses the worker at 8:00 a.m. and Remedy Intelligent Staffing pays the worker one hour's wages.

Andrew Angsouvan commenced performing work for General Mills in July 2013. Mr. Angsouvan was subject to a protocol whereby he would appear for work at the appointed time each day and wait to be assigned to work in a particular area of General Mills. Mr. Angsouvan last appeared for work at General Mills on March 4, 2014. On that day, the General Mills staff selected other workers ahead of Mr. Angsouvan. Mr. Angsouvan understood that he was to wait until 8:00 a.m. to see whether General Mills had a work assignment for him that day. On that day, Mr. Angsouvan decided that waiting to be assigned was a waste of his time and gas. Mr. Angsouvan announced, "I'm out," and left General Mills before learning whether General Mills had work for him that day. Mr. Angsouvan left before 8:00 a.m.

On March 5, 2014, Mr. Angsouvan contacted Remedy Intelligent Staffing and asked whether it was okay for him to return to General Mills. The employer notified Mr. Angsouvan that General Mills had placed him on a “do not return” list based on his departure from General Mills the prior day. When the Remedy representative told Mr. Angsouvan that he could not return to General Mills, Mr. Angsouvan asked whether Remedy had any other work for him. The employer did not have any additional work for him at that time. On March 10, 2014, Mr. Angsouvan made additional contact with the employer to ask about additional work.

The employer cites prior issues as the partial basis for the employer’s lack of work for Mr. Angsouvan. In April 2013, Mr. Angsouvan missed the first day of a new assignment due to a lack of transportation and the client business elected not to have him continue in the assignment. In July 2013, before Mr. Angsouvan began working at General Mills, the employer recommended Mr. Angsouvan to a client business for a potential assignment. The client business rejected Mr. Angsouvan based on his prior work for that client business through another temp agency.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

The evidence, at best, establishes a single unexcused absence, not a voluntary quit from the assignment. The evidence indicates that on one occasion Mr. Angsouvan elected not to stick around at General Mills to see whether that client business would eventually place him in a daily assignment. It is worth noting that Mr. Angsouvan’s work for General Mills was essentially day labor. Though the temp agency and General Mills expected Mr. Angsouvan to show up on a daily basis, neither made any guarantee that there would be work for Mr. Angsouvan. When Mr. Angsouvan left the assignment early on March 4, 2014, he did so under the belief that there would be no work for him *that day*. The employer has failed to present sufficient evidence to establish that there would have been any work for Mr. Angsouvan on March 4, 2014. Mr. Angsouvan’s decision not to wait to see whether a daily assignment would be available for him that day did not amount to a voluntary quit from the assignment or from the temp agency. The weight of the evidence indicates that the client business terminated the arrangement by notifying the temp agency that Mr. Angsouvan had been placed on the do not return list. The single early departure was insufficient to establish misconduct in connection with the assignment. See Iowa Code section 96.5(2)(a) (regarding discharges for misconduct). See also Iowa Administrative Code rule 871 – 24.32(7) (regarding discharges based on excessive unexcused absences). See also Sallis v. Employment Appeal Board, 437 N.W.2d 895 (Iowa 1989) (indicating that there must be aggravating factors attending a single unexcused absence before it can constitute misconduct).

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.

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 weight of the evidence in the record indicates Mr. Angsouvan was in contact with the temp agency the day after he last performed work for General Mills, that he asked for work at that time, and that the temp agency told him there was no work for him at that time. Thus, regardless of whether the temp agency had an end-of-assignment policy that complied with the requirements of the statute, Mr. Angsouvan fulfilled his obligation to make contact and request another assignment. The March 2014 separation from the temp agency was for good cause attributable to the temp agency. The claimant is eligible for benefits provided he is otherwise eligible. The employer's account may be charged for benefits paid to claimant.

DECISION:

The claims deputy April 2, 2014, reference 01, decision is reversed. The claimant's March 2014 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

jet/css