

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BLAKE A REA
Claimant

APPEAL NO. 10A-UI-11050-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WORKSOURCE INC
WORKSOURCE STAFFING
Employer

OC: 06/27/10
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Blake Rea filed a timely appeal from the August 5, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 21, 2010. Mr. Rea participated. Jamie Brecount, Branch Manager, represented the employer.

ISSUE:

Whether the claimant's 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: The employer is a staffing agency. Blake Rea performed work for the employer on a single full-time, temp-to-hire work assignment at Siemens. Mr. Rea started the assignment on March 8, 2010 and last performed work in the assignment on June 28, 2010. On June 29, 2010, Siemens notified Worksource Staffing that it was ending Mr. Rea's assignment based on a recent arrest on the charge of Domestic Abuse Assault and based on prior convictions Mr. Rea had disclosed on her application for employment. The recent charge had no connection with the employment. The employer lacked a work rule that would have placed Mr. Rea on notice that his conduct outside of work could lead to discipline at work. On June 29, 2010, Worksource Staffing Account Manager Lori Street notified Mr. Rea that Siemens had ended the assignment. During that contact, Mr. Rea inquired about a further assignment. The employer had no further assignment at that time, but Ms. Streeter directed Mr. Rea to make follow contact with the employer.

The employer had Mr. Rea sign a couple documents at the start of the employment that contained reference to his obligation to contact the employer within three days of the end of a work assignment to indicate his availability for a new assignment. The policy statements as presented to Mr. Rea and signed by Mr. Rea appeared in documents that contained other policies or material. One document containing the end-of-assignment notice requirement also contained materials addressing absences, tardiness, no-call, no-show absences and a

statement regarding revisions to wage payment collection law. The other document was an orientation checklist referencing many different orientation matters. The employer did not present Mr. Rea with a statement of the end-of-assignment notification policy as a separate stand-alone document free of other non-related material.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

Mr. Rea was discharged from the work assignment for no disqualifying reason. Mr. Rea's criminal charge, absent a specific work rule that would place him on notice that off-duty conduct could leave to workplace discipline, would not constitute misconduct in connection with the employment. See Kleidosty v. Employment Appeal Board, 482 N.W.2d 416, 418 (Iowa 1992). Mr. Rea's prior criminal convictions would not constitute misconduct in connection with the employment.

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.

871 IAC 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's end-of-assignment notification policy fails to comply with the requirements of Iowa Code section 96.5(1)(j). In both documents containing the policy, the policy is buried amongst other material. The employer did not present Mr. Rea with a clear and concise statement of the end-of-assignment notification policy as a separate stand-alone document free

of other non-related material. Because the employer did not comply with the requirements of the statute, the employer cannot claim the benefit of the statute to deny unemployment insurance benefits. At the time Mr. Rea was involuntarily separated from the work assignment he had fulfilled his obligation to the staffing agency and any election on his part not to seek further assignments through the staffing agency would not disqualify him for unemployment insurance benefits. Nonetheless, the evidence indicates that Mr. Rea was in fact in contact with the employer on the day the assignment ended and at that point requested a new assignment. Thus, even if the employer could claim the benefit of Iowa Code section 96.5(1)(j), the evidence indicates that Mr. Rea satisfied any obligation he had under the statute.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Rea separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Mr. Rea is eligible for benefits provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Rea.

DECISION:

The Agency representative's August 5, 2010, reference 01, decision is reversed. The claimant's 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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