

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERNEST E HARRIS

Claimant

APPEAL NO. 11A-UI-06842-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LABOR READY MIDWEST INC

Employer

OC: 04/10/11

Claimant: Appellant (2-R)

871 IAC 24.26(19) – Casual Employment

STATEMENT OF THE CASE:

Ernest Harris filed a timely appeal from the May 24, 2011, reference 02, decision that denied benefits in connection with an April 16, 2011 separation. After due notice was issued, a hearing was held on June 20, 2011. Mr. Harris participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate.

ISSUE:

Whether the claimant's April 16, 2011 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 temporary employment firm. The claimant performed day labor for the employer. The claimant completed a day-labor assignment on April 16, 2011. At that point the claimant inquired about further work, but the employer had no additional work for the claimant at that time. The claimant later relocated to Ottumwa.

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.

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 § 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 § 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 has failed to present any evidence to indicate that compliance with Iowa Code § 96.5(1)(j). Accordingly, the employer cannot claim that benefit of that statute. The claimant completed his contract of hire when he completed the day-labor assignment on April 16, 2011 and was under no further obligation to seek work through the employer.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that 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.

The claimant's testimony calls into question whether the claimant was available for work after he separated from the temporary employment agency in mid-April 2011. According to the claimant, he lost transportation, relocated to a new community, and then could not accept a particular position because of his criminal record. This matter will be remanded to the Claims Division for adjudication of the able and available issues.

DECISION:

The Agency representative's May 24, 2011, reference 02, decision is reversed. The claimant's April 16, 2011 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.

This matter is remanded to the Claims Division for determination of whether the claimant was available for work after the April 16, 2011 separation.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs