

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TINA M NETTLETON
Claimant

APPEAL 23A-UI-12209-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
EMPLOYER

**OC: 11/19/23
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.5(2)a – Discharge
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.5(1)J – VQ – Temporary employment firm

STATEMENT OF THE CASE:

Claimant filed an appeal from the December 12, 2023 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on January 18, 2024. Claimant, Tina Nettleton, participated. Claimant was represented by attorney, Lorraine Gaynor. Employer, Team Staffing Solutions Inc, participated through Sarah Fiedler, Human Resources Manager. Employer's Exhibit 1 and 2 were offered and admitted into evidence. Official notice was taken of the administrative record.

ISSUES:

Whether claimant filed a timely appeal.
Whether claimant's separation was a voluntary quit without good cause attributable to the employer.
Whether the claimant made a timely request for another job assignment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to claimant at the correct address on December 12, 2023. The decision states that it becomes final unless an appeal is postmarked or received by the Iowa Workforce Development Appeals Section by December 22, 2023. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. Claimant appealed the decision on December 28, 2023. Claimant did not receive the decision in the mail. On December 27, 2023 the claimant called Iowa Workforce Development to inquire about the status of her benefits and was told a decision was mailed to her on December 12, 2023 denying benefits. The next day, December 28, 2023, the claimant went to the Iowa Workforce Development office to file an appeal to her denial. Claimant's appeal was received by Iowa Workforce Development on December 28, 2023.

Ms. Fiedler testified that there is potential for all employees placed in a job through Team Staffing Solutions Inc to become hired (no longer temporary) positions. However, there is no guarantee that any employee placed in a job will transition to permanent, hired employment status. Claimant began working for Team Staffing Solutions Inc's client, Alphagomma America, as a customer service representative on July 10, 2023. The claimant's last day physically working for Alphagomma was October 18, 2023. Claimant received a text from Theresa Butler on behalf of Team Staffing Solutions Inc on October 19, 2023 informing her that Alphagomma America had ended her assignment due to absences. The claimant responded to the text messages stating she was sorry. There was no further communication between the claimant and the employer.

Claimant received a notice from team staffing on June 29, 2023 stating that the claimant needed to inform Team Staffing Solutions within three days of the end of an assignment to request a new assignment. The notice warned the claimant that failure to follow the instructions in the notice may result in the claimant being considered a voluntary quit and may affect her eligibility for unemployment benefits. Claimant's signature is on the notice. See Employer's Exhibit 1.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision."

Iowa Admin. Code r. 871-24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion? *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973).

Claimant never received the decision. Therefore, the appeal notice provisions were invalid. Claimant did not have a reasonable opportunity to file a timely appeal. Claimant filed her appeal the next day after learning of the decision denying benefits. Claimant's appeal is considered timely.

For the reasons that follow, the administrative law judge concludes that claimant voluntarily quit her employment without good cause attributable to employer. Benefits are denied.

Iowa Code section 96.5(1)(j) provides:

An individual shall be disqualified for benefits

1. 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. (1) 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.

(2) 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.

(3) For purposes of this lettered paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(b) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

Iowa Admin. Code r. 871-24.26(15) 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:

Employee of temporary employment firm.

a. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm within three days of completion of an employment assignment and seeks reassignment under the contract of hire. The employee must be advised by the employer of the notification requirement in writing and receive a copy.

b. The individual shall be eligible for benefits under this subrule if the individual had good cause for not contacting the employer within three days and did notify the employer at the first reasonable opportunity.

c. Good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business; blinding snow storm; telephone lines down; employer closed for vacation; hospitalization of the claimant; and other substantial reasons.

d. Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer or any other currently accepted means of communications. Working days means the normal days in which the employer is open for business.

The employer's testimony establishes the employer is a temporary employment firm that places employees with employers on a temporary basis. The employees may be hired on a permanent basis for any job, however, there is no guarantee for permanent hiring. Under Iowa Admin. Code r. 871-24.26(15) a temporary employee is one who, "provides services to clients to supplement their workforce during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects." The employer testified that the claimant was a temporary employee with the potential to be hired on a permanent basis. The evidence establishes that the claimant was working for Alphagomma under the categories found in Iowa Code section 96.5j(3)(a) and was not a temp-to-hire.

It is the duty of the administrative law judge, as the trier of fact, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness

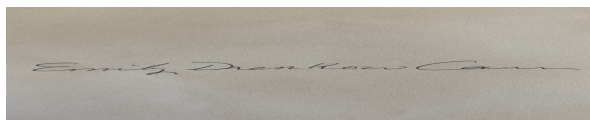
has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. Specifically, I find the notice submitted in the employer's exhibit 1 credible and that the claimant did receive and sign a copy of the notice on June 29, 2023.

The evidence in the record establishes a voluntary quit without good cause attributable to the employer. The claimant completed an assignment on October 18, 2023. The claimant had previously been notified in writing, as required by Iowa Code section 96.5(1)(j) of her obligation to contact Team Staffing within three working days of completing an assignment to request a new assignment or be deemed to have quit and risk being disqualified for unemployment insurance benefits. While the claimant did receive a text from Teresa Butler informing her of the end of the assignment, the claimant did not contact the employer or respond to the text to request a new assignment. For these reasons, the claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The December 12, 2023 (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily quit her employment without good cause attributable to the employer. The claimant's separation day is October 19, 2023. Benefits are denied until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.



Emily Drenkow Carr
Administrative Law Judge

January 23, 2024
Decision Dated and Mailed

ed/rvs

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

Employment Appeal Board
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: [eab.iowa.gov](https://www.eab.iowa.gov)**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.