

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

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WESTAFF USA INC  
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SAINT LOUIS MO 63166-0283

**NUNC PRO TUNC**  
**05A-UI-02637-S2T**  
**Appeal Number:**  
**OC: 01/16/05 R: 03**  
**Claimant: Appellant (2)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1-j – Separation from Temporary Employer

STATEMENT OF THE CASE:

Michael Cargo (claimant) appealed a representative's March 9, 2005 decision (reference 01) that concluded Michael Cargo (claimant) was not eligible to receive unemployment insurance benefits based on his separation from work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 30, 2005. The claimant participated personally. The employer participated by Vicky Matthias, Branch Supervisor.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary employment service. The claimant performed services from August 23 through October 20, 2004. He did not sign a document indicating that he was to contact the employer within three days following the completion of an assignment to request placement in a new assignment. The employer had the claimant sign a document on August 16, 2004, indicating he was to contact the employer weekly after the completion of his assignment.

The claimant's last assignment ended on October 21, 2004, due to absenteeism. The claimant was absent on October 1, 2004, due to an injury. On October 7, 2004, he was absent when his girlfriend had a seizure. He took her to the hospital. On October 21, 2004, someone stole the battery from his car and he could not drive to work. The employer terminated the claimant on October 21, 2004. The employer issued no warnings to the claimant for absenteeism.

The claimant sought reassignment from the employer on October 25, 2004, but no work was available.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was separated from the employer for any disqualifying reason. As an employee of a temporary service, the employer must advise the claimant of a three day notice requirement and give the claimant a copy of that requirement.

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.

The employer did not provide the claimant with the proper notice requirements and has, therefore, failed to satisfy the requirements of Iowa Code section 96.5-1-j. Benefits are allowed.

DECISION:

The representative's March 9, 2005 decision (reference 01) is reversed. The claimant is eligible to receive unemployment insurance benefits.

bas/sc/pjs