

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

PRESTON P PARIS
900 N 4TH
BURLINGTON IA 50601

LABOR READY MIDWEST INC
C/O TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-01590-DT
OC: 12/19/04 R: 04
Claimant: Respondent (1/R)

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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

871 IAC 24.26(19) – Temporary Employment

STATEMENT OF THE CASE:

Labor Ready Midwest, Inc. (employer) appealed a representative's February 1, 2005 decision (reference 03) that concluded Preston P. Paris (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 2, 2005. This appeal was consolidated for hearing with one related appeal, 05A-UI-01591-DT. The claimant participated in the hearing. Barb Edmond appeared on the employer's behalf. During the hearing, administrative notice was taken of the contents of the administrative file. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment after June 26, 2004 either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The employer is a temporary staffing agency. The claimant had been taking assignments through the employer's Burlington, Iowa office through June 26, 2004. As determined in the concurrently issued decision in appeal 05A-UI-01591-DT, the determination that claimant's separation as of June 26, 2004 was not disqualifying has become final and is not subject to further review.

However, subsequent to June 26, 2004, the claimant had additional one-day assignments at the employer's business clients on June 28, July 9, July 12, July 14, July 15, July 16, July 20, July 30, and November 29, 2004. The claimant completed each day's assignment. Both the claimant and the employer knew it was a day-to-day assignment when the assignment was offered and accepted. The claimant did report back to the employer either at the end of each day worked or on the following day; both the employer and the claimant knew as of the end of the day that there was no further work available with the business client. Each time the claimant expressed his willingness to work other assignments, but no other work was immediately available.

The employer asserted there were some occasions separate from the days worked when the claimant was contacted and offered work, but that he either declined or was not available; The first date documented by the employer when this could have occurred was January 3, 2005.

REASONING AND CONCLUSIONS OF LAW:

The essential question in this case is whether there was a disqualifying separation from employment after June 26, 2004.

Iowa Code Section 96.5-1 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.

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 considered the claimant's assignment to have been completed. Where a temporary employment assignment has ended and the employer is aware of the end of that assignment, regardless of whether the claimant reported for a new assignment, it is deemed to be a separation other than voluntary leaving, and benefits are allowed. Further, even to the extent there might be some means of treating a failure to report for additional assignments as a voluntary quit, the claimant did comply with the statutory provision of checking in after the completion of the assignment; the statute does not require that the individual remain in regular contact with the employer after initially informing the employer of the completion of the most recent assignment. Iowa Code Section 96.5-1-j; 871 IAC 24.26(15). Benefits are allowed, if the claimant is otherwise eligible.

An issue as to whether the claimant might have refused an offer of work or been unavailable for work as of approximately January 3, 2005 arose during the hearing. These issues were not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

DECISION:

The representative's February 1, 2005 decision (reference 03) is affirmed. The claimant's separations after June 26, 2004 through November 30, 2004 were not voluntary quits but were completions of temporary assignments. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the offer of work and availability issues.

ld/kjf