

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JIMMY L WALKER
Claimant

APPEAL NO. 09A-UI-05591-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES
Employer

**Original Claim: 03/23/08
Claimant: Appellant (2)**

Section 96.5(1) – Quit/Part-Time
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant, Jimmy Walker, filed an appeal from a decision dated March 6, 2009, reference 01. The decision found he had quit work without good cause attributable to the employer but was still eligible for benefits because he has sufficient other earnings in his base period. After due notice was issued, a hearing was held by telephone conference call on May 6, 2009. The claimant participated on his own behalf. The employer, Temp Associates, participated by Manager Jan Windsor. Exhibit D-1 was admitted into the record.

ISSUE:

The issue is whether the appeal is timely.

FINDINGS OF FACT:

A disqualification decision was mailed to the claimant's last known address of record on March 6, 2009. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by March 16, 2009. The appeal was not filed until April 8, 2009, which is after the date noticed on the decision.

The claimant acknowledged he received the decision in a timely manner. He had not been contacted for a fact-finding interview and called his local Workforce Center to ask questions about the decision. He was told he did not need to file an appeal since he was still eligible for benefits from other wages in his base period. A new claim for benefits was filed effective March 22, 2009, and by then the other wages had dropped off his base period and he was disqualified for benefits and the current appeal was filed.

Mr. Walker began employment with Temp Associates June 27, 2007. His last assignment was from May 1 through 27, 2008, at Industrial Tool and Fabrication. That assignment ended with a lay off for lack of work. The employer has no record of the claimant calling within three days of the end of the assignment to request more work. Mr. Walker asserted he had no knowledge of this requirement and no recollection of signing any availability statement informing him of the rule. The employer did not provide a copy of any such signed statement for this hearing.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless 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.

The claimant did not file an appeal from this decision because he had been told by his local Workforce Center he did not need to. At that time, the information was correct, because even though he was found to have quit without good cause attributable to the employer, he had sufficient earnings in his base period to remain eligible. The recommendation was apparently made without taking fully into account the claimant was at the end of his current benefit year and would likely be filing a new claim in the near future. The current appeal was filed after a disqualifying decision was issued on this separation on a later benefit year. For these reasons, the administrative law judge concludes the appeal should be accepted as timely.

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 claimant's last assignment ended due to a lay off for lack of work. The employer has no record of him calling in within three days of the end of that assignment. But, the employer has also failed to provide a copy of the form the claimant allegedly signed that notified him of the requirement to call in within three days. Mr. Walker did not acknowledge signing any such document or having knowledge of the requirement to call in within three days. Without more evidence to support the employer's contention such notice was given and received, disqualification may not be imposed.

DECISION:

The decision of the representative dated March 6, 2009, reference 01, is reversed. Jimmy Walker is qualified for benefits provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw