

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REGINALD ALLEN
Claimant

APPEAL NO. 08A-UI-01564-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**USA STAFFING INC
LABOR WORLD IA**
Employer

**OC: 01/06/08 R: 03
Claimant: Respondent (1)**

Section 96.4-3 – Able and Available
Section 96.5-3-a – Refusal of Suitable Work

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated February 7, 2008, reference 03, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 3, 2008. The claimant participated. Participating as a witness was Lloyd Allen. The employer participated by Jeff Oswald, Hearing Representative and witness, Ray Mienders, Branch Manager.

ISSUES:

The issues in this matter are whether the claimant re-contacted a temporary employer for reassignment, whether the claimant is able and available for work and whether the claimant refused to accept suitable work.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant most recently worked as a flagger for the captioned temporary employment service from November 19, 2007 until November 26, 2007 when he was laid off due to lack of work. The claimant contacted the temporary service within three days for additional work after his most recent assignment ended; however, no work was available to him. Subsequently, the claimant was offered a job stacking pallets. The claimant was unable to secure transportation to the jobsite prior to the position being filled by another worker. On December 28, 2007, the employer mistakenly offered the claimant's brother a snow shoveling job believing that they were speaking to Mr. Reginald Allen.

REASONING AND CONCLUSIONS OF LAW:

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.

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 purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of a temporary assignment. Although the flagging assignment had ended Mr. Allen's relationship with USA Staffing continued. USA Staffing was aware that the claimant was available for work as the claimant had contacted the employer as required within three working days. The claimant attempted to accept assignments when offered by the temporary employment service. On one occasion the claimant was unable to secure transportation to the employer's worksite prior to the temporary service filling the position with another worker. On another occasion, the employer mistakenly believed that they were speaking with the claimant when in fact they were speaking with a brother about a snow removal temporary position.

Considering the hearing record, the administrative law judge concludes that the claimant is able and available for work and has not refused an offer of suitable work. The claimant has complied with a three-day call-in requirement.

DECISION:

The representative's decision dated February 7, 2007, reference 03, is hereby affirmed. The claimant is able and available for work. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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