

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAVID CARDENAS BERMUDEZ
Claimant

TEAM STAFF SOLUTIONS INC
Employer

APPEAL 21A-UI-01274-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/05/20
Claimant: Appellant (1)**

Iowa Code § 96.5(1)j – Voluntary Leaving (Temporary Assignment)

STATEMENT OF THE CASE:

The claimant/appellant, David Cardenas Bermudez, filed an appeal from the December 3, 2020, (reference 03) unemployment insurance decision that concluded he was not eligible for unemployment insurance benefits. After due notice was issued, a hearing was held on February 17, 2021. Claimant participated. The employer participated through Risk Manager Sarah C Fielder. Exhibits 1 and 2 were entered into the record.

ISSUE:

Did the claimant separate from employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant, David Cardenas-Bermudez, was employed full-time as a fabricator by the employer, Team Staff Solutions Inc., from January 14, 2019, until this employment ended on June 29, 2020, when he quit. His last assignment was with Siemens.

The employer has a notification requirement policy which states employees are to “request placement in a new assignment within three working days of completing their last assignment or they will be deemed a voluntary quit and further assignments may not be offered.” The employer provided a copy of the notification requirement policy acknowledged by the claimant on December 6, 2020. (Exhibit 1)

On June 30, 2020, Siemens ended the claimant's assignment there. On June 30, 2020, Account Manager Casey Nichols informed the claimant of an assignment at Bagcraft at \$12.25 per hour. That same day, the claimant informed Ms. Nichols he was pursuing a position with Scott's Miracle Grow. The claimant did not request reassignment. The employer provided notes written by Ms. Nichols. (Exhibit 2)

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)j provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. (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 the purposes of this 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(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:

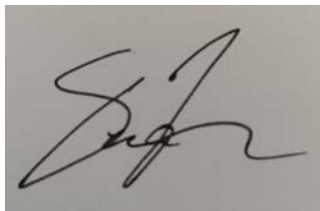
(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of 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 each temporary assignment so they may be reassigned and continue working. In this case, the claimant gave the employer no notice of availability and, therefore, is considered to have quit the employment, even though claimant may have returned to work for the temporary agency at some later date. Benefits are denied.

DECISION:

The December 3, 2020, (reference 03) unemployment insurance decision is affirmed. The claimant's separation was not attributable to the employer. Benefits are withheld until such time as the claimant works in and has been paid for wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.



Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

March 1, 2021
Decision Dated and Mailed

smn/scn