

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

RYAN M SHULTZ
Claimant

APPEAL NO. 18A-UI-07641-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AEROTEK INC
Employer

OC: 05/27/18
Claimant: Appellant (2)

Iowa Code Section 96.5(1)(j) – Separation From Temporary Employment
Iowa Administrative Code Rule 871-24.26(19) – Fulfillment of the Contract for Hire

STATEMENT OF THE CASE:

Ryan Shultz filed a timely appeal from the July 6, 2018, reference 02, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the Benefits Bureau deputy's conclusion that Mr. Shultz had voluntarily quit the employment on June 5, 2018, by failing to contact the temporary employment firm within three days of completing an assignment after having been told in writing on his obligation to make such contact. After due notice was issued, a hearing was held on August 3, 2018. Mr. Shultz participated. The employer did not register a telephone number for the hearing and did not participate. On July 26, 2018, the employer provided written notice that the employer waived participation in the appeal hearing. The hearing in this matter was consolidated with the hearing in Appeal Number 18A-UI-07642-JTT. Exhibit A was received into evidence. At the request of Mr. Shultz, the administrative law judge took official notice of the fact-finding materials and marked three of those documents as Department Exhibits D-1, D-2 and D-3. The administrative law judge took official notice of the Agency's administrative records of benefits disbursed to the claimant (DBRO). The administrative law judge took official notice of the Google Map distance between Ryan, Iowa and Anamosa, Iowa.

ISSUE:

Whether the claimant's separation from the temporary employment agency was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Aerotek, Inc. is a temporary employment agency. Ryan Shultz established his employment relationship with Aerotek on October 31, 2017 and performed work for Aerotek in a single, full-time, temp-to-hire work assignment at Exide in Manchester. Mr. Schultz began the assignment in November 2017 and last performed work in the assignment on the morning of May 31, 2018. Mr. Shultz's work hours were 10:00 p.m. to 6:00 a.m., Sunday evening through Friday morning. The temporary assignment was expected to end on June 1, 2018. After Mr. Shultz completed the overnight shift that ended at 6:00 a.m. on May 31, 2018, he was next scheduled to report for work that evening at 10:00 p.m. While Mr. Shultz was sleeping between the shifts, an Aerotek representative left a phone message for him to let him know that Exide was laying off an entire

40-person line, that Mr. Shultz was included in that layoff, and that Mr. Shultz should not report for further work at Exide. The Aerotek representative mentioned a potential assignment in Anamosa and asked Mr. Shultz to get back in touch regarding the potential assignment. The Aerotek representative followed up with a text message at 5:26 p.m., in which the representative set forth the same information. At 9:42 p.m., Mr. Shultz sent a text message to the Aerotek representative indicating that he had just seen the message and would call the next day. On the morning of June 1, 2018, Mr. Shultz made four attempts to reach the Aerotek representative and left one voice mail message. In the voice mail message, Mr. Shultz expressed interest in learning more about the potential assignment in Anamosa. At all relevant times, Mr. Shultz lived in Ryan. The Exide plant in Manchester was an eight-minute drive from Mr. Shultz's home. The distance from Ryan to Anamosa was about 26 miles or a 30-minute drive.

On October 31, 2017, the employer had Mr. Shultz electronically sign a Notification of Unemployment – Failure to Maintain Contact. The employer did not provide Mr. Shultz with a copy of the document he electronically signed. The document states as follows:

The Employee is responsible to maintain contact with the Aerotek, Inc. field office after the completion of an assignment.

Aerotek, Inc ("the Company") will make every effort to re-assign you upon completion of an assignment, however you are also responsible to make personal contact with the local Aerotek, Inc field office within 24 hours of the completion of an assignment providing availability for additional work with the Company. Failure to make contact, apprising us of your availability for subsequent work within 24 hours upon completion of an assignment, may be construed as a resignation and may result in the denial of unemployment benefits. In the event that you are employed on an assignment in the states of Alabama, Idaho, Iowa, Michigan, New Jersey, North Dakota or Tennessee and your assignment ends, please refer to the notes below.

Further down in the document appeared seven state-specific paragraphs. The paragraph pertaining to Iowa stated as follows:

Iowa: You are required to contact the Company within three working days of the completion of an assignment and then on a weekly basis to notify the Company that you are available for other assignments. Failure to do so may result in termination of employment with the company and may jeopardize your eligibility for unemployment benefits. If you turn down two or more assignments that are comparable to assignments that you have already worked, the refusal may jeopardize your eligibility for unemployment benefits.

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 evidence in the record establishes a separation that was for good cause attributable to Aerotek. The separation was effective May 31, 2018. On that day, Mr. Shultz completed his work assignment. On the next day, Mr. Shultz made contact with Aerotek to request a new assignment. The employer's end-of-assignment notification policy did not satisfy the requirements of Iowa Code section 96.5(1)(j). The policy document was not clear or concise. Toward the end of the main paragraph on the document, the document essentially told Mr. Shultz to disregard that paragraph and look at the Iowa-specific "Note" further down the page. That Iowa-specific paragraph contained a convoluted policy statement that omitted a statement that failure to contact the employer within three working days after the completion of an assignment would be deemed a voluntary quit. The Iowa-specific paragraph tossed in additional requirements as if they were part of the Iowa-specific law when they are not part of the Iowa Code or Iowa Administrative. In addition to the deficient policy statement, the

evidence fails to establish that the employer met the statutory requirement that the employer provide Mr. Shultz with a copy of the document he signed. Because the employer failed to comply with the requirements set forth at Iowa Code section 96.5(1)(j), subsection J does not apply to the employment relationship between Mr. Shultz and Aerotek. Mr. Shultz fulfilled his contract of hire when he completed the assignment at Exide and was under no obligation to seek further assignment through Aerotek.

Because the evidence in the record establishes a May 31, 2018 separation from the temporary employment agency that was for good cause attributable to the temporary employment agency, Mr. Shultz is eligible for benefits provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The July 6, 2018, reference 02, decision is reversed. The claimant's separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The separation was effective May 31, 2018. The claimant is eligible for benefits provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs