

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRYAN H WILKERSON**  
Claimant

**APPEAL NO. 12A-UI-11786-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEAM STAFFING SOLUTIONS INC**  
Employer

**OC: 08/26/12**  
**Claimant: Respondent (5)**

Iowa Code Section 96.5(2)(a) - Discharge

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 26, 2012, reference 01, decision that allowed benefits in connection with an August 10, 2012 separation. After due notice was issued, a hearing was held on October 25, 2012. Claimant Bryan Wilkerson did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Sarah Fiedler, Claims Administrator, represented the employer. Exhibit One was received into evidence.

**ISSUE:**

Whether Mr. Wilkerson separated from the employer on August 10, 2012 for a reason that would disqualify Mr. Wilkerson for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency. On August 1, 2011, Team Staffing Solutions placed Bryan Wilkerson in a temporary work assignment at Wilton Precision Steel. October 12, 2011, Mr. Wilkerson suffered an injury to his right elbow while working in the assignment. Mr. Wilkerson continued to perform light-duty work at Wilton Precision Steel until November 30, 2011, when Wilton Precision Steel ended his assignment.

Thereafter, Team Staffing Solutions placed Mr. Wilkerson in two additional light-duty assignments as part of its handling of the worker's compensation. One of these light-duty assignments was at a Salvation Army near Davenport. The other was a Pearl City Outreach in Muscatine. Mr. Wilkerson continued to perform work in the light-duty assignments until August 10, 2012, when Team Staffing Solutions received medical documentation that Mr. Wilkerson had reached maximum medical improvement (MMI). On that day, Sarah Fiedler, Team Staffing Solutions Claims Administrator, notified Mr. Wilkerson that she was ending his light-duty assignment. Ms. Fiedler directed Mr. Wilkerson to contact his attorney or the worker's compensation carrier if had any questions. Ms. Fiedler did not raise the topic of additional work assignments. The employer takes the position that it was Mr. Wilkerson's responsibility to ask

for additional work if he wanted it, but that he would need to have that conversation with someone at Team Staffing Solutions other than Ms. Fielder.

The employer has an end of assignment notification policy that obligated Mr. Wilkerson to contact the employer within three working days of the end of an assignment to indicate his availability for additional work. The policy is set forth as a stand-alone policy on a separate document. Mr. Wilkerson had signed his acknowledgement of the policy and received a copy of the policy in July 2011.

### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Workforce Development rule 871 IAC 24.1(113) provides as follows:

24.1(113) Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

This case is not about whether Mr. Wilkerson failed to contact the employer within three working days of the end of an assignment to request additional work. It would be a miscarriage of justice to characterize it as such. This case is instead about an employer, Team Staffing Solutions, terminating the employment of a previously injured worker as soon as medical documentation indicated maximum medical improvement (MMI) had been achieved. There is no indication in the record that the client agencies with which the employer had placed Mr. Wilkerson had no further need of his services, such that Mr. Wilkerson could be said to have completed a temporary work assignment in the typical sense. This case presents a situation that falls outside the temporary employment arrangements contemplated in and addressed by Iowa Code section 96.5(1)(j).

The weight of the evidence establishes that Team Staffing Solutions discharged Mr. Wilkerson from the employment solely based on the fact that he had reached maximum medical improvement. The discharge was not based on misconduct and would not disqualify Mr. Wilkerson for unemployment insurance benefits. See Iowa Code section 96.5(2)(a) and Iowa Admin. Code section 871 IAC 24.22(1)(a). Mr. Wilkerson is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

**DECISION:**

The Agency representative's September 26, 2012, reference 01, decision is modified as follows. The claimant was discharged on August 10, 2012 for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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