

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RICKERA BROOKS
Claimant

DES STAFFING SERVICES INC
Employer

APPEAL 21A-UI-19779-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/11/21
Claimant: Respondent (1)**

Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment

STATEMENT OF THE CASE:

The employer, Des Staffing Services Inc., filed an appeal from the August 30, 2021, (reference 01) unemployment insurance decision that granted benefits based upon the conclusion the claimant was discharged and the record did not support the notion it was for work-related misconduct. The parties were properly notified of the hearing. A telephone hearing was held on October 28, 2021. The claimant participated. The employer participated through Human Resources Director Kathy Anderson. Exhibits 1, 2, 3, 4, 5 and 6 were received into the record. Official notice is taken of the agency records.

ISSUE:

Did the claimant quit by not reporting for an additional work assignment within three business days of the end of the last assignment?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant was last assigned at Coles Quality Foods from January 15, 2021, until January 26, 2021. After the assignment ended, the claimant reported to the employer within three working days and requested further assignment as required by written policy. (Employer's Exhibit 1) The claimant was not given a paper copy of the assignment policy. The assignment policy is not separate from the employee handbook and contract for hire.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment with good cause attributable to the employer.

Iowa Code § 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. (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. [Emphasis added]**

(3) For the purposes of this lettered paragraph:

(a) "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.

(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 § 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 § 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. The plain language of the statute allows benefits for a claimant “who notifies the temporary employment firm of completion of an assignment *and* who seeks reassignment.” (Emphasis supplied.)

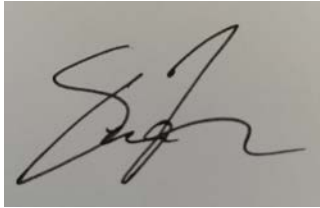
It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness’s testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using his own common sense and experience, the administrative law judge finds the claimant’s contention that she informed the employer of the end of the assignment and requested a new assignment credible.

Nevertheless, the employer’s policy is not compliant with the code. The employer should review the bolded section of this decision above. An assignment policy that is not separate from the contract or hire does not comply with the code and cannot be used as a basis for disqualification regardless of the claimant’s actions after the end of an assignment. Furthermore, the claimant did not receive a paper copy after signing it. These may seem like trivial technicalities to the employer, but this Iowa Code section is written with these requirements, so temporary staffing firm employees are aware of this novel requirement. Benefits are granted.

DECISION:

The August 30, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant's separation was attributable to the employer. Benefits are granted, provided she is otherwise eligible.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is shown within a rectangular frame.

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

November 18, 2021
Decision Dated and Mailed

smn/scn