

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

WILLIAM E NESBIT
Claimant

TEAM STAFFING SOLUTIONS INC
Employer

APPEAL NO. 19A-UI-01613-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/20/19
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 13, 2019, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on March 8, 2019. Claimant participated personally. Employer participated by Sarah C. Fiedler. Employer's Exhibit 1 was admitted into evidence.

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: Claimant was hired by employer on January 10, 2019. Claimant was placed at Nordex. Claimant's placement at Nordex, but not his employment with employer, was ended on January 28, 2019. Claimant did not show up for work on January 28, 2019 because of auto problems and weather. Claimant was told of this dismissal from the employment officer overseeing Nordex.

Claimant stated that later in the day when he was told of his dismissal and again the next day, claimant attempted to call back the representative from employer and request a new placement. Claimant stated that he left messages on the representative's phone on both occasions and he was not called back either time.

Employer stated that they have no documentation of claimant calling into employer after he was told of the separation from the Nordex placement. Employer did not provide the person claimant mentioned he'd called repeatedly as she was out for medical reasons.

Employer did present claimant with a written copy of employer's policy that claimant was to be in contact with employer within three days of the ending of an assignment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation was with good cause attributable to the employer.

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 Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976). In this matter, employer had the opportunity to produce the witness who claimant had testified that he'd attempted to contact on multiple occasions within two days of the date of the job separation. Employer did not produce a direct witness to controvert the testimony given by claimant.

The purpose of Iowa Code § 96.5(1)j is to provide notice to the temporary agency employer that the claimant is available for and seeking work at the end of the temporary assignment. Since he contacted the employer within three working days of the notification of the end of the assignment, requested reassignment, and employer did not return his call and request for assignment, benefits are allowed, provided he is otherwise eligible.

DECISION:

The February 13, 2019, (reference 01) unemployment insurance decision is reversed. The claimant's separation was attributable to the employer. The employer had adequate knowledge about the conclusion of the claimant's assignment and the request for more work but did not return claimant's call. Benefits are allowed, provided the claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn