

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARL E MORLAN
Claimant

APPEAL NO. 12A-UI-05264-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

RIVERSIDE STAFFING SERVICE
Employer

OC: 04/08/12
Claimant: Appellant (2)

Section 96.5-1 – Voluntary Quit
871 IAC 24.26(19) – Temporary Employment
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant appealed from a representative's decision dated May 4, 2012, reference 03, that denies claimant benefits on April 8, 2012, as being unable to perform work due to injury. A telephone hearing was held on May 30, 2012. The claimant participated. The employer did not participate.

ISSUES:

Whether claimant voluntarily quit with good cause attributable to the employer.

Whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds that: The claimant completed a two-day work assignment for the employer at US Global in December 2011 and earned about \$160.00. The department record does not show the employer reported these taxable wages to the department. The claimant has not been offered further work with this temporary employment firm.

Claimant suffered a bicep tendon injury in November 2011 and he had it surgically repaired in February 2012. The doctor restricted him from lifting more than 20 pounds over his head. Claimant has been job searching for clean-up construction work, telemarketing, fast-food restaurant jobs, sale positions that do not violate his lifting restriction and where he has previous experience.

The employer failed to respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1 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.

871 IAC 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 administrative law judge concludes the claimant completed a temporary job assignment for the employer on December 15, 2011 that is considered a voluntarily quit with good cause.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge further concludes the claimant is able and available to perform work, and no benefit disqualification is imposed April 8, 2012.

Although claimant has a medical imposed work restriction, it does not preclude him for performing jobs that he has previous experience.

DECISION:

The department decision dated May 4, 2012, reference 03, is reversed. The claimant voluntarily quit with good cause on December 15, 2011. He is able and available for work. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css