

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THEODIS F SEAPHUS

Claimant

APPEAL NO. 14A-UI-06918-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LABOR READY MIDWEST INC

Employer

OC: 06/01/14

Claimant: Appellant (2/R)

Iowa Code Section 96.5(1)(j) – Separation from Temporary Employment Firm

STATEMENT OF THE CASE:

Theodis Seaphus filed a timely appeal from the June 30, 2014, reference 02, decision that disqualified him for benefits based on an Agency conclusion that he was placed on a disciplinary suspension on June 7, 2014 for violation of company rules. After due notice was issued, a hearing was held on July 28, 2014. Mr. Seaphus did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Ashley Malloy, Customer Service Representative, represented the employer. Exhibits One and Two were received into evidence.

ISSUE:

Whether Mr. Seaphus separated from the employment for reason that disqualifies him for benefits or that relieves the employer of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Labor Ready Midwest, Inc. is a temporary employment agency. Theodis Seaphus has performed work for the employer in a series of day labor assignments. Mr. Seaphus established a claim for unemployment insurance benefits that was effective June 1, 2014. The employer's records indicate that Mr. Seaphus worked for the employer four days during the week of June 1 through June 7, 2014. Those four days were June 3, 4, 5, and 6, 2014. The administrative law judge notes that at the June 26, 2014 fact-finding interview, at which Mr. Seaphus did not appear, the employer referenced and the Claims Deputy made note of a June 15, 2014 separation date. There was no mention in the fact-finding materials of a separation from the employment during the week of June 1-7, 2014. After Thursday, June 6 Mr. Seaphus performed work in additional day labor assignments on Tuesday, June 10, 2014 and on Monday, June 16, 2014. Mr. Seaphus has not returned for further work with the temporary employment firm since he last performed work for the employer on June 16, 2014.

Mr. Seaphus accepted a day labor assignment on June 17, 2014, but then did not appear for the assignment or notify the employer that he was not going to appear for the assignment. The employer asserts that effective June 17, 2014 Mr. Seaphus was on a two-week suspension.

However, the employer never notified Mr. Seaphus of the suspension. Under the employer's work rules, an employee is suspended for two weeks if the employee fails to appear for an assignment. The employer notes that Mr. Seaphus had also failed to appear for an assignment without notice to Labor Ready on April 16 and 25, 2014. If an employee needs to be absent from an assignment the employee has accepted, the employer's work rules require that the employee notify Labor Ready no less than an hour prior to the scheduled start of the day labor assignment.

The employer has submitted an "Acknowledgment Form State of Iowa Unemployment Law." The document contains a clear and concise statement that Mr. Seaphus is obligated to contact the employer within three working days of the completion of an assignment or be deemed to have voluntarily quit and suffer potential denial of unemployment insurance benefits. Mr. Seaphus signed the document on August 8, 2011. The employer did not provide Mr. Seaphus with a copy of the document.

REASONING AND CONCLUSIONS OF LAW:

The employment has been a series of day labor assignments. That being the case, Mr. Seaphus separates from each temporary employment work assignment at the end of the workday. Separation from the assignment may or may not indicate separation from the employer, Labor Ready, depending on the surrounding circumstances. During the week of June 1 through June 7, 2014, Mr. Seaphus performed work for the employer on four days. Though the evidence indicates separation from a day labor assignment on each of those four days, the evidence does not indicate a separation from the employment during that week. The evidence does indicate a separation from the employment effective June 16, 2014 after which Mr. Seaphus performed no additional work for the employer. That brings us to the employer's end-of-assignment notice requirement.

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. 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.

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.

For the purposes of this paragraph:

(1) "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.

(2) "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 policy statement in the Acknowledgment Form is sufficiently clear and concise to comply with the requirements of the statute. However, the employer did not provide Mr. Seaphus with a copy of the document he signed. The statute requires that the employee be provided with a copy of the document, not merely that the employee has had an opportunity to request a copy of the document. The employer's failure to provide Mr. Seaphus with a copy of the document he signed, prevents the employer's end-of-assignment notice requirement from complying with the requirements set forth in the statute. The employer cannot gain the benefit of the statute, because the employer has failed to comply with a critical notice requirement set forth in the statute. Accordingly, Iowa Code section 96.5(1)(j) did not apply to Mr. Seaphus' employment. Mr. Seaphus fulfilled the contract of hire each time he completed a day labor shift, including upon completion of the June 16, 2014 day labor assignment. Effective June 16, 2014 Mr. Seaphus separated from the temporary employment firm with good cause attributable to the temporary employment firm. The June 16, 2014 separation did not disqualify Mr. Seaphus for benefits or relieve the employer of liability for benefits. Mr. Seaphus is eligible for benefits in connection with the June 16, 2014 separation provided he is otherwise eligible. Based on the June 16, 2014 separation, the employer's account may be charged for benefits.

The evidence gives rise to a separate legal issue regarding whether Mr. Seaphus refused an offer of suitable employment without good cause on June 17, 2014, at a time when he was attempting to claim unemployment insurance benefits. Because Mr. Seaphus did not appear for the appeal hearing, that issue could not be added to the appeal hearing and must be addressed upon remand to the Benefits Bureau.

DECISION:

The Claims Deputy's June 30, 2014, reference 02, decision is reversed. The claimant's separation occurred on June 16, 2014, when the claimant fulfilled the contract of hire by completing a day labor assignment. The June 16, 2014 separation did not disqualify the claimant for benefits or relieve the employer of liability for benefits. The claimant would be eligible for benefits in connection with the June 16, 2014 separation, provided he meets all other eligibility requirements. The employer's account may be charged for benefits in connection based on the June 16, 2014 separation.

This matter is remanded to the Benefits Bureau for determination of whether the claimant refused an offer of suitable employment without good cause on July 17, 2014.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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