

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENNIS A BROWN

Claimant

APPEAL NO. 12A-UI-13687-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JACOBSON STAFFING

Employer

OC: 10/07/12

Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the November 8, 2012 (reference 02) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on December 17, 2012. Claimant participated. Employer participated through Account Manager Susan Francis. The administrative law judge took judicial notice of the administrative record. The employer's proposed exhibit was not made part of the record because claimant did not receive it; however, the document was included in the fact-finding record, which was provided to claimant and the employer's representative and is part of the administrative record.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a forklift operator at Jacobson Warehouse from August 16, 2012 and was separated from employment on August 21, 2012. Site Supervisor Duane Golderman did not participate in the hearing but Francis testified he alleged that claimant became verbally confrontational with the lead person on the second shift and his trainer and that Golderman wanted his assignment to end. The trainer had called him a "dumbass." Claimant reported the incident to the supervisor and the next day he was told he was being laid off because work was slow. Francis left a voice mail message for claimant but he did not receive the message before reporting to work on August 22. They spoke on August 22 and she told him the assignment had ended. He called the following day to inquire about other work and was told they had none. Francis wrote a letter to Jessica Kruse at Humility of Mary Shelter VALOR Program on September 7, 2012 telling her that claimant was "laid off." (See, fact-finding record.)

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 § 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.

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 § 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.

Francis' testimony is at odds with her written statement to Kruse; thus, claimant's testimony is considered credible where the parties dispute an issue of fact. The purpose of the statute 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. The claimant was laid off due to a lack of work at the assignment site. Since he contacted the employer within three working days of the notification of the end of the assignment, requested reassignment, and there was no work available, benefits are allowed, provided he is otherwise eligible.

DECISION:

The November 8, 2012 (reference 02) decision is affirmed. The claimant's separation from employment was attributable to the employer. The employer had adequate knowledge about the conclusion of the claimant's assignment but had no further work available at the time. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css