

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ORLANDO A SMITH
Claimant

APPEAL NO. 09A-UI-03209-S2

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAMBRIDGE TEMPOSITIONS INC
Employer

**Original Claim: 01/18/09
Claimant: Appellant (2)**

Section 96.5-1-j – Separation from Temporary Employer

STATEMENT OF THE CASE:

Orlando Smith (claimant) appealed a representative's February 23, 2009 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits due to his separation from work with Cambridge TEMPositions (employer). After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held on April 27, 2009, in Cedar Rapids, Iowa. The claimant was represented by Thomas Currie, Attorney at Law, and participated personally. The employer participated by Stephanie Matteson, Account Manager, and Chuck Roe, General Manager. The claimant offered and Exhibit A was received into evidence. The employer offered and Exhibits One, Two, and Three were received into evidence.

ISSUE:

The issue is whether the claimant was separated from work for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on October 2, 2008, as a temporary full-time box stacker assigned to work at Heinz.

The employer is a temporary employment service. He signed a document on October 1, 2008, indicating that he was to contact the employer within three days following the completion of an assignment to request placement in a new assignment. The claimant was given a copy of the document, which was part of the contract for hire.

On January 12, 2009, the claimant suffered a work-related injury when a Heinz employee grabbed the claimant's clothing over his shoulder and swung him around, causing the claimant to hit a wall. The claimant was upset, went to his Heinz supervisor, and explained the situation. The Heinz supervisor took the claimant to the Heinz Human Resources Department supervisor. The claimant asked the Heinz Human Resources Department supervisor if he could go home and return the following day. The Heinz Human Resources Department supervisor granted him permission.

The claimant notified his employer about the situation. The employer said it would investigate and call the claimant back. The employer called the claimant later telling him that Heinz did not want him to return because he left work prior to the start of his shift. The claimant asked for reassignment but no work was available.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not separated from the employer for any disqualifying reason.

Iowa Code section 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.

As an employee of a temporary service, the employer must advise the claimant of a three-day notice requirement and give the claimant a copy of that requirement. The notice requirement cannot be a part of the contract for hire. The employer provided the claimant with the notice requirement, but it was part of the contract for hire. While the employer did not satisfy the requirements of Iowa Code section 96.5-1-j, the claimant did follow the notice requirement. He sought reassignment immediately after his assignment ended.

The employer argues that the claimant voluntarily quit work without good cause attributable to the employer. A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The employer did not provide any evidence of the claimant's intention to terminate the relationship. Absent intent, this separation cannot be considered voluntary. The claimant was separated from employment for no disqualifying reason. Benefits are allowed.

DECISION:

The representative's February 23, 2009 decision (reference 01) is reversed. The claimant was separated from employment for no disqualifying reasons. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw