

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOSEPH M CURFMAN
Claimant

TEAM STAFFING SOLUTIONS INC
Employer

APPEAL 17A-UI-06785-JCT
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 06/11/17
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 3, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 21, 2017. The claimant participated personally. The employer participated through human resources generalist Sarah Fiedler. Employer Exhibit 1 and Claimant Exhibit A were received into evidence. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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 reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed last assigned at Answer-Team from April 17, 2017, and was separated from the assignment, but not the employment, on May 27, 2017. The employer has a written policy compliant with Iowa Code § 96.5(1)j and the claimant was aware he had to request another assignment within three business days (Employer Exhibit 1).

Generally, the employer tracks its contact with employees if they check in, through a database. Ms. Fiedler, who works in the Muscatine office, reported the claimant failed to check in and request another assignment within three business days of his assignment ending, and that record reflects his next contact with the employer was June 20, 2017. In contrast, the claimant asserted he called May 30, 2017 because May 29, 2017 was a holiday, and that he spoke to Andrea. When he spoke to her, she said she would check him in, put him on the list, see what work was available and get back to the claimant. He did not hear back from the employer and called again on June 6, 2017 and spoke to Andrea again, who relayed the same message. The claimant furnished phone records as proof that he called the Fort Madison office, (Claimant

Exhibit A) and Ms. Fielder confirmed the number called was in fact the Fort Madison office. No one from the Fort Madison office, including Andrea, participated in the hearing.

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 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 evidence is disputed as to whether the claimant requested another assignment in compliance with the employer's policy (Employer Exhibit 1). The administrative law judge is aware that proof of phone records does not show what the nature of conversation was when he made such calls. However, the claimant provided specific details, dates and phone records to confirm he made contact with the employer as directed (Claimant Exhibit A). In contrast, Ms. Fiedler, who does not work in the Fort Madison office where the claimant called, relied upon the records, or lack thereof, and concluded based on a lack of notes, the claimant did not make the required call.

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). Mindful of the ruling in *Crosser, id.*, and noting that the claimant presented direct, first-hand testimony while the employer relied upon second-hand reports, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer.

Based on the evidence presented, the administrative law judge concludes the claimant 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 July 3, 2017, (reference 01) decision is reversed. The claimant's separation from employment was attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible. The benefits withheld shall be paid to claimant.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn