

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSE L GOMEZ

Claimant

APPEAL NO. 13A-UI-00920-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QPS EMPLOYMENT GROUP INC

Employer

OC: 11/08/09

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 18, 2013 (reference 04) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on March 18, 2013. Claimant participated through interpreter Anna Pottebaum. Employer participated through branch manager Dan Garcia and Rhonda Hefter. The employer's proposed exhibit was not admitted because claimant did not receive it.

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 seasonal full-time as a corn sorter assigned at Monsanto and was separated from employment on Saturday, September 22, 2012 because the season was over. He did not receive a reassignment policy written in Spanish. No one in that QPS branch speaks Spanish and no one explained the reassignment reporting document to him in Spanish or English. He was not aware he was supposed to report back within three working days for reassignment after the end of an assignment. He went to the office but it was closed on Saturday and Sunday. On Monday the office was also closed when he reported at 9 a.m. There was a sign posted in English but he did not understand it. He tried to call but they did not answer. Claimant does not speak or read English and was often confused in the hearing, even with an extremely competent, professional interpreter.

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.

Since employer provided no evidence that it presented claimant with a comprehensible written copy of the reporting policy, claimant's recollection that he did not receive or understand a notice of the reporting policy is credible. The employer hired claimant for mutual benefit to fill a temporary work order from Monsanto with the knowledge that he does not speak or read English but expected him to understand the reporting policy written in English without providing translation or interpretation assistance. Without knowledge or understanding of the reporting policy, claimant was reasonable to opt to look for work elsewhere or to report for additional work when he did. Benefits are allowed.

DECISION:

The January 18, 2013 (reference 04) decision is reversed. 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. The benefits withheld shall be paid to claimant.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs