

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GREGORY B LAMAR
Claimant

APPEAL NO. 11A-UI-02599-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

**OC: 01/16/11
Claimant: Appellant (2)**

Section 96.5-1-j – Voluntary Leaving - Temporary Employment

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated February 28, 2011, reference 01, which denied unemployment insurance benefits. After due notice was issued, a telephone hearing was held on March 28, 2011. The claimant participated personally. The employer participated by Ms. Sara Fiedler, claims administrator.

ISSUE:

At issue is whether the claimant voluntary quit employment by failing to contact the temporary employer within three working days after the completion of his last work assignment.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Gregory Lamar was employed by Team Staffing Solutions, Inc. from June 21, 2010, until December 17, 2010, when he was removed from his most recent job assignment. Mr. Lamar had been assigned to work at the Winegard Company as a warehouse worker and was paid by the hour. His contact person at the temporary employment service was Nicole Wright.

On December 17, Team Staffing Solutions, Inc. was informed by the Winegard Company that they wished to have Mr. Lamar removed from the assignment. The claimant had made a shipping mistake and the client employer did not want him to return to the assignment.

Mr. Lamar was informed by Team Staffing Solutions not to return to his assignment at the Winegard Company on December 17, 2010. During the telephone conversation, Mr. Lamar inquired as to whether there was other work available through Team Staffing Solutions and the claimant was told there was not any work available at that time. Approximately three days later, Mr. Lamar personally visited the Team Staffing Solutions offices and again inquired about available work but was told by Tiffany Mitchell that there were no assignments available.

It is the employer's position that company records do not reflect that Mr. Lamar inquired about additional work after being informed of his removal from the Winegard Company assignment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant left employment with good cause attributable to the employer.

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.

The evidence in this case is disputed. The administrative law judge, having heard the testimony of the witness and having considered the matter, concludes that Mr. Lamar complied with the statutory requirement of contacting the temporary employment service within three working days of the completion of his most recent assignment to seek re-assignment. Mr. Lamar participated personally and offered firsthand, sworn testimony, testifying that he inquired about further assignments at the time that he was informed by the company that his assignment with the Winegard Company had ended. The claimant further testified that within three working days he had personally contacted Tiffany Mitchell at the employer's facility and was again told that there were no assignments available to him. In contrast, the employer has relied upon hearsay evidence in support of its position that Mr. Lamar did not seek reassignment within three days

as required by Section 96.5-1-j of the Employment Security Act. Although hearsay evidence is admissible in administrative proceedings, it cannot be accorded the same weight as sworn, direct testimony. The administrative law judge finds the claimant to be a credible witness and finds that his testimony is not inherently improbable. Mr. Lamar testified with specificity about his efforts to seek re-assignment within the three-day time limit.

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of a temporary assignment. The claimant complied with the statutory requirement.

DECISION:

The representative's decision dated February 28, 2011, reference 01, is reversed. The claimant's separation from employment was attributable to the employer. The claimant had adequate contact with the employer about his availability as required by the statute. Benefits are allowed, provided the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw