

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MATTHEW WILKINS
Claimant

MASTERSON PERSONNEL INC
Employer

APPEAL 20A-UI-09719-J1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/03/20
Claimant: APPELLANT (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(1)J – Requesting Reassignment

STATEMENT OF THE CASE:

On August 14, 2020, the claimant filed an appeal from the August 12, 2020, (reference 01) unemployment insurance decision that denied benefits based on failure to request reassignment. The parties were properly notified about the hearing. A telephone hearing was held on September 22, 2020. Claimant participated. Employer participated through Jim Robertson, Unemployment Operations Manager and Samantha Jones, Recruiter. A document entitled Notice of Obligation to Seek Reassignment was admitted as Exhibit ER 1 and a screen shot of a phone was admitted as Exhibit CLM A.

ISSUES:

Did claimant request a reassignment after his assignment ended?
Did claimant voluntarily quit without good cause attributable to his employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on July 28, 2019. Claimant last worked was assigned to work by employment agency, Kelly Services, to a work assignment at Cambrex in March 2019 as full-time operator. As of July 2019 Cambrex switched employment agencies and Cambrex utilized Masterson Personnel, Inc. (Masterson). Ms. Jones testified the official transfer of claimant to work for Masterson was July 28, 2019. On July 3, 2019 claimant signed a document entitled Notice of Obligation to Seek Reassignment. (Ex. ER 1)

Claimant was separated from employment on May 8, 2020. Claimant received a call from Ms. Jones at 2:34 p.m. (EX CLM A) Claimant was informed that Cambrex did not want his services anymore and his assignment was over.

Claimant testified that he asked Ms. Jones that some of his personal items be retrieved by Masterson and returned to him. Claimant testified that in that conversation he discussed obtaining a new assignment. Ms. Jones testified that she called claimant on May 8, 2020 and told him his assignment was over. She agreed that claimant asked for his personal items. Ms. Jones denied

that claimant asked for a reassignment. Ms. Jones said it was company policy not to discuss reassignment with employees when they are told that an assignment is over unless initiated by the employee. Ms. Jones testified that she made notes of the phone call to claimant on May 8, 2020 and her notes reflect that claimant did not ask for reassignment. Ms. Jones testified that the position claimant was at Cambrex was a temp-to-hire position. Ms. Jones said there was no guarantee of a permanent position, Cambrex often would hire personnel who first are placed through an employment agency.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be decided is whether the employee was a temporary employee hired by a temporary employment firm.

Iowa Code section 96.5. provides, in part,

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(15) provides:

Employee of temporary employment firm.

a. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm within three days of completion of an employment assignment and seeks reassignment under the contract of hire. The employee must be advised by the employer of the notification requirement in writing and receive a copy.

b. The individual shall be eligible for benefits under this subrule if the individual has good cause for not contacting the employer within three days and did notify the employer at the first reasonable opportunity.

c. Good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business; blinding snow storm; telephone lines down; employer closed for vacation; hospitalization of the claimant; and other substantial reasons.

d. Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer, or any other currently acceptable means of communications. Working days means the normal days in which the employer is open for business.

The Iowa Supreme Court affirmed the denial of unemployment benefits to a claimant who failed to call her temporary employment firm within three days of the end of her assignment. Sladek v. Employment Appeal Bd., 939 N.W.2d 632, (Iowa 2020)

Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

The employer assumes that it is a temporary employment firm and claimant was required to ask for a reassignment after his position at Cambrex ended. However, there is a specific definition of a temporary employment firm and it is based upon whether the employment firm employs temporary employees. Under Iowa Admin. Code r. 871-24.26(15) a temporary employee is one who, "provide services to clients to supplement their workforce during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects." The employer testified that claimant was a temp-to-hire position. It is not one of the enumerated categories found in Iowa Code section 96.5j(3)(a). There was no evidence that claimant was working for Cambrex under one of the categories found in Iowa Code section 96.5j(3)(a). I find that claimant was not a temporary employee as defined under Iowa Code section 96.5j(3)(a) and did not need to ask for reassignment. The claimant was terminated from his assignment. There

was no evidence that claimant was terminated for a disqualifiable reason. I find the claimant is eligible for unemployment insurance benefits.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The August 12, 2020, (reference 01) unemployment insurance decision is reversed. Benefits are payable, provided claimant is otherwise eligible.



James F. Elliott
Administrative Law Judge

September 25, 2020
Decision Dated and Mailed

je/mh