

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GONZALO HERRERA
Claimant

APPEAL NO. 08A-UI-03022-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES INC
Employer

**OC: 02/24/08 R: 02
Claimant: Appellant (2)**

871 IAC 24.26(19) – Separation from Temporary Employment

STATEMENT OF THE CASE:

Gonzalo Herrera filed a timely appeal from the March 21, 2008, reference 02, decision that denied benefits in connection with a separation from Kelly Services in November 2007. After due notice was issued, a hearing was held on April 10, 2008. Mr. Herrera did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. On-site Staffing Supervisor Kala Lewis represented the employer and presented additional testimony through On-site Staffing Supervisor Omar Velazco.

ISSUE:

Whether the claimant's separation from the temporary employment agency was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Gonzalo Herrera established his employment relationship with Kelly Services on or before September 4, 2007. On September 4, 2007, the employer placed Mr. Herrera in a full-time assignment at Electronic Data Systems (EDS). The employer ended the assignment on November 19, 2007, due to a lack of work. Mr. Herrera speaks Spanish and does not speak English. The Kelly Services On-site Supervisors at EDS speak Spanish and notified Mr. Herrera in Spanish that the assignment would be ending.

The employer lacks a policy that would have directed Mr. Herrera to contact Kelly Services within a certain number of days after the end of the assignment to notify Kelly Services that he was available for a new assignment. No such policy was discussed with, or distributed to, Mr. Herrera.

REASONING AND CONCLUSIONS OF LAW:

The question is whether Mr. Herrera's separation from the temporary employment agency was for good cause accountable to the employer. It was.

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.

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 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 evidence indicates that Mr. Herrera completed the assignment that ended November 19, 2007. The evidence in the record indicates that the employer lacks an end-of-assignment notification policy that complies with Iowa Code section 96.5(1)(j). Accordingly, Mr. Herrera was not obligated to maintain contact with Kelly Services at the end of assignment at EDS. Also, Mr. Herrera's election not to contact EDS after the end of the assignment would not disqualify him for unemployment insurance benefits. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Herrera's November 19, 2007 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Mr. Herrera is eligible for unemployment insurance benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Herrera.

If the employer believes there has been a refusal to accept suitable work or a disqualifying separation has occurred since Mr. Gonzalo established he claim for benefits on February 24, 2008, the employer may initiate proceedings on those issues by contacting a local Workforce Development Center. However, the only issue before the administrative law judge was the November 2007 separation.

DECISION:

The Agency representative's March 21, 2008, reference 02, decision is reversed. The claimant's November 2007 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs