

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEWITTE, DARCIE, D
Claimant

APPEAL NO. 11A-UI-01667-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RIVERSIDE STAFFING SERVICES INC
Employer

OC: 12/12/10
Claimant: Respondent (5)

Iowa Code section 96.5(1)(j) – Separation From Temporary Employment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 4, 2011, reference 01, decision that allowed benefits in connection with a December 10, 2010 separation. After due notice was issued, a hearing was held on March 10, 2011. Claimant participated. Karrie Minch represented the employer. Exhibit One was received into evidence.

ISSUE:

Whether the claimant's December 10, 2010 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: The employer is temporary employment agency. The claimant completed a temporary work assignment on December 10, 2010. The claimant contacted the temporary employment agency the same day to notify employment agency that the assignment was done and that she was available for work assignment. The temporary employment agency did not have work for the claimant at that time. The claimant subsequently started a new work assignment in January 2011.

On October 7, 2008, the employer executed an Employee Communication Agreement with the claimant. The document contains a number of policies, including policy requiring the claimant to notify temporary employment agency when an assignment ends. The document provides no deadline for doing so. Employer did not provide claimant with a copy of the document, but instead provided claimant with an employee brochure at start of employment.

REASONING AND CONCLUSIONS OF LAW:

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 claimant was laid off from assignment effective December 10, 2010. The claimant was in contact with the employer on the same day her assignment ended to alert the employer to the fact that the assignment has ended and to request a new assignment. The claimant's December 10, 2010 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.

The administrative law judge notes that the employer's end-of-assignment notification policy does not comply with requirements of Iowa Code section 96.5(1)(j). The employer, therefore, cannot claim the benefit of that statute. In any event, the claimant's contact with the employer on December 10, 2010 fulfilled any requirement the statute would have imposed on her if the employer had complied with its obligations under the statute.

DECISION:

The Agency representative's February 4, 2011, reference 01, decision is modified as follows. Claimant was laid off from temporary employment work assignment effective December 10, 2010. The claimant's separation from the temporary employment agency on December 10, 2010 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/css