

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICTORIA WASHINGTON

Claimant

APPEAL NO. 09A-UI-02436-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LABOR READY MIDWEST INC

Employer

OC: 12/21/08

Claimant: Respondent (1-R)

Iowa Code Section 96.5(1)(j) – Separation From Temporary Employment
871 IAC 24.26(19) – Separation from Temporary Employment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 2, 2009, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held on March 10, 2009. Claimant Victoria Washington participated. Dan Uang of TALX UC eXpress represented the employer and presented testimony through Kim Thompson, Branch Manager.

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: The employer is a temporary employment agency. Victoria Washington has had multiple temporary employment assignments through Labor Ready Midwest. On October 20, 2008, the employer placed Ms. Washington in a day-labor assignment at Green and Associates, where Ms. Washington performed telephone work associated with a political campaign. At the end of each one-day assignment, Green and Associates would provide Ms. Washington with a "ticket" that would allow her to get paid for the day's work and that would tell Labor Ready whether Green and Associates wanted Ms. Washington to return for another day's work. The workday generally consisted of eight hours.

On October 27, Ms. Washington appeared for her day-labor assignment at Green and Associates. Ms. Washington worked as long as Green and Associates had work for her. After seven hours and fifteen minutes of work, Ms. Washington collected her "ticket." Ms. Washington took her ticket to Labor Ready and received her pay. At some point, Labor Ready learned that Green and Associates was not happy with Ms. Washington's participation in workplace gossip. Green and Associates did not want Ms. Washington to return. Labor Ready prepared a reprimand for Ms. Washington. However, Ms. Washington did not return for additional day-labor assignments.

The employer has an end-of-assignment notification policy. The policy is set forth on a stand-alone document. The policy states that an employee must contact Labor Ready within three working days of the end of an assignment to let Labor Ready know that the employee is available for a new assignment. The employer had Ms. Washington sign the policy on March 1, 2008. The employer does not know whether Ms. Washington was provided with a copy of the policy.

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 evidence in the record fails to establish that Ms. Washington was provided with a copy of the employer's end-of-assignment notification policy. Accordingly, the employer has not fulfilled the requirements of Iowa Code section 96.5(1)(j) and cannot claim the benefits of that statute. The weight of the evidence indicates that Ms. Washington completed her one-day assignment on October 27, 2008 and elected not to report for additional one-day assignments. Ms. Washington's election not to return for additional temporary employment assignments did not disqualify her for unemployment insurance benefits.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Washington's separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Ms. Washington is eligible for benefits provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Washington.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required

to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The fact that Ms. Washington was traveling out-of-state at the time of the hearing raises the question of whether Ms. Washington is available for work. This matter will be remanded to the Claims Division for determination of that issue.

DECISION:

The Agency representative's February 2, 2009, reference 03, decision is affirmed. The claimant's 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.

This matter is remanded to the Claims Division for determination of whether the claimant is available for work.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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