

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ALFUNZO BROWN
3701 – 2ND ST LOT 1C
CORALVILLE IA 52241

TEAM STAFFING SOLUTIONS INC
116 HARRISON ST
MUSCATINE IA 52761

Appeal Number: 04A-UI-01786-HT
OC: 01/04/04 R: 03
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1-j – Quit/Temporary

STATEMENT OF THE CASE:

The claimant, Alfunzo Brown, filed an appeal from a decision dated February 11, 2004, reference 05. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on March 10, 2004. The claimant participated on his own behalf. The employer, Team Staffing, participated by Branch Manager Kristine Heyer.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Alfunzo Brown began employment with Team Staffing on January 24, 2003. He had two assignments, the second one at Americold which began on October 14, 2003. It was an indefinite assignment with a possibility of permanent hire.

Mr. Brown was no-call/no-show to work for the shift which began at 11:00 p.m. on Monday, October 20, 2003. He contacted Shannon, the account manager, on October 21, 2003, at which time she told him the client had requested his removal from the assignment. He asked her whether other work was available but was told there was nothing at that time.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is not.

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 employer maintained the claimant had not contacted anyone at Team Staffing within three days of the end of the assignment at Americold. However, the claimant's testimony was that he talked to Shannon and the employer did not present any rebuttal testimony from this individual although she is still employed at Team Staffing. If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). The employer as failed to present sufficient evidence to rebut the claimant's testimony that he did comply with the requirement to notify the agency within three working days of the end of the assignment, and disqualification may not be imposed.

DECISION:

The representative's decision of February 11, 2004, reference 05, is reversed. Alfunzo Brown is qualified for benefits provided he is otherwise eligible.

bgh/kjf