

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN CURTIS
Claimant

APPEAL NO: 12A-UI-03631-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

OC: 02/06/11
Claimant: Appellant (2)

Iowa Code § 96.5-1-j - Voluntary Quit of Temporary Employment
Iowa Code § 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

Brian Curtis (claimant) appealed an unemployment insurance decision dated March 22, 2012, reference 03, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Team Staffing Solutions, Inc. (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 24, 2012. The claimant participated in the hearing. The employer participated through Sarah Fiedler, Claims Administrator. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's appeal is timely, and if so, whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: A disqualification decision was mailed to the claimant's last-known address of record on March 22, 2012. The claimant was homeless during this period of time and never received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by April 1, 2012. The appeal was not filed until April 5, 2012, which is after the date noticed on the disqualification decision.

The claimant was employed for 12 hours for this temporary employment agency. He was assigned to Muscatine Logistics and began work on second shift on September 26, 2011. The claimant went through eight hours of orientation and then returned on September 27, 2011 and continued orientation for another four hours the next day. Muscatine Logistics told him he would not fit on their equipment because he is too large. The claimant was supposed to run a forklift but he weighs 405 pounds and the steering wheel was too close to his stomach. He had no other choice but to leave the assignment. The claimant went to the employer's facility two days later on September 29, 2011 to sign in for work but none was available.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The claimant did not receive the decision within the ten-day time period allowed for the appeal. He did file an appeal immediately upon receiving information he had been disqualified. Therefore, the appeal shall be accepted as timely.

The substantive issue to be determined in this case is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer or if the employer discharged him for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a. The employer herein is a temporary employment agency and temporary employment agencies are governed by Iowa Code § 96.5-1-j, which places specific restrictions on both the employer and the employee with regard to qualification for unemployment insurance benefits after a voluntary separation.

Iowa Code § 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.

In the case herein, there was no information presented as to the details of the employer's end-of-assignment notification policy. However, the evidence does confirm the claimant checked in for additional work two days after his last assignment but no work was available.

The reasons the claimant's assignment ended are not relevant unless the employer discharged him from its company but there is no allegation of a discharge. The employer witness testified the claimant walked off the job and would not be eligible for additional assignments as a result. However, this witness was relying on hearsay evidence that the claimant walked off the job and he disputes that allegation. He explained that he was told by the assignment company that he could not fit into their equipment due to his unusually large size, so the end of the assignment was not within his control. Since there was no work available for the claimant when he checked in two days after his assignment ended, his separation was with good cause attributable to the employer. Benefits are allowed.

DECISION:

The claimant's appeal is timely. The unemployment insurance decision dated March 22, 2012, reference 03, is reversed. The claimant voluntarily quit his employment with good cause attributable to the employer and is qualified to receive unemployment insurance benefits, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css