

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARELL LIVINGSTON
Claimant

APPEAL NO. 13A-UI-08722-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QPS EMPLOYMENT GROUP INC
Employer

OC: 06/16/13
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Darell Livingston filed a timely appeal from the July 18, 2013, reference 01, decision that disqualified him for benefits. After due notice was issued, a hearing was held on September 3, 2013. Mr. Livingston did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Rhonda Hefter de Santisteban represented the employer. Exhibit One was received into evidence.

ISSUE:

Whether the claimant's December 2012 separation from the temporary employment agency was for good cause attributable to the employer. It was.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: QPS Employment Group, Inc., is a temporary employment agency. QPS placed Darell Livingston in a full-time, temporary work assignment at Aeron Advanced Manufacturing in Mason City. Mr. Livingston started the assignment on December 19, 2012 and worked two days in the assignment before Aeron ended the assignment. The client business' decision to end the assignment was based on attendance issues Mr. Livingston had at some earlier point when he performed work for Aeron as an employee of the Masterson temporary employment agency. The client's decision to end the QPS assignment was not based on anything that happened during Mr. Livingston's time in the QPS assignment. On December 21, 2012, QPS Placement Coordinator Zoey Bach went to Aeron, notified Mr. Livingston that the assignment was ended and escorted him from the Aeron facility. At that point, Mr. Livingston was still eligible for additional assignments through QPS. Ms. Bach told Mr. Livingston that he was obligated to contact QPS for additional assignments. Mr. Livingston made no further contact with QPS until January 2013.

When Mr. Livingston started with QPS in September 2012, QPS had Mr. Livingston sign a Three-Day Reassignment Policy. The employer provided Mr. Livingston with a copy of the policy. The policy stated as follows:

Once you complete an assignment with a client, it is your duty to contact QPS for reassignment within three (3) working days as required by Iowa Code section 96.5-1-j. Failure to report within three (3) days for reassignment or to accept a new job assignment offered without reasonable cause will indicate that you have refused available work and quit working for QPS Employment Group.

The policy was silent on whether failure to contact QPS within three working days of the end of an assignment would have any impact on unemployment insurance benefit eligibility.

The employer also had Mr. Livingston sign an employment application that contained a different statement of the end-of-assignment contact requirement on the back side of the application. That policy statement obligated Mr. Livingston to contact QPS within two business days of the end of an assignment and to contact QPS weekly for employment. That policy statement indicated that failure to make the weekly contact would impact unemployment insurance benefit eligibility.

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 indicates Mr. Livingston completed an assignment on December 21, 2012 and then did not have further contact with the temporary employment agency until January 2013. The employer's end of assignment policy statement complied with the statutory requirement that it be a separate policy statement. The policy statement complied with the statute's requirement for clear and concise language. However, the policy said nothing of consequences to unemployment insurance benefit eligibility if Mr. Livingston failed to contact QPS within three working days of the end of an assignment. By omitting such language, the policy failed to set forth the critically important notice required by the statute. The policy statement did not comply with the statutory requirements and cannot be used as the basis for disqualifying Mr. Livingston for unemployment insurance benefits.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Livingston's December 21, 2012 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Mr. Livingston is eligible for benefits provided he is otherwise eligible. The employer's account may be charged for benefits. The administrative law judge notes that the correct separation date is December 21, 2012, not December 27, 2013.

DECISION:

The Agency representative's July 18, 2013, reference 01, decision is reversed. The claimant's December 21, 2012 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The claimant is eligible for benefits, provided he 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