

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TERESA M MILLIGAN**  
Claimant

**APPEAL NO. 15A-UI-03432-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEAM STAFFING SOLUTIONS INC**  
Employer

**OC: 02/08/15**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Teresa Milligan filed a timely appeal from the March 10, 2015, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that she had voluntarily quit her employment with the temporary employment agency by failing to notify the temporary employment agency within three days of completing an assignment. The decision provided an erroneous separation date, 08/26/15. After due notice was issued, a hearing was held on April 14, 2015. The hearing was consolidated with the hearing in Appeal Number 15A-UI-03433-JTT. Ms. Milligan participated. Sarah Fiedler represented the employer. Exhibits One, Two and A were received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits paid to the claimant.

Immediately after the hearing record closed, the administrative law judge concluded that he needed the August 12, 2014 Patient Status Report in order to fully develop the record and enter an appropriate decision. The administrative law judge contacted the parties and reopened the hearing record for the limited purpose of allowing the employer to submit the August 12, 2014 Patient Status Report into evidence. The Administrative law judge received the Patient Status Report into evidence as Exhibit Three and forwarded a copy of the exhibit to the Appeals Bureau staff so that it could be mailed to the claimant.

**ISSUE:**

Whether the claimant's August 2014 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. Teresa Milligan commenced her employment relationship with Team Staffing Solutions, Inc., in February 2014. At that time, the employer had Ms. Milligan sign a "Notification Requirement – Availability for Work Assignments" document that provides as follows:

I understand and acknowledge that upon completion of an assignment, I must contact the Company and request placement in a new assignment within three (3) working days of completing my last assignment or I will be deemed a voluntary quit and further assignments may not be offered.

I understand that my failure to contact the Company may affect my eligibility for unemployment insurance benefits.

My signature below acknowledges that I have been provided a copy of this policy.

Ms. Milligan received a copy of the document she signed.

On June 12, 2014, Ms. Milligan began to suffer a repetitive motion injury to her back in the course of her assignment at Siemens. On Saturday, June 14, 2014, Ms. Milligan sought medical evaluation at an emergency room. The emergency room physician diagnosed a back strain and possible left rotator cuff injury. The emergency room doctor took Ms. Milligan off work for a week. On Monday, June 16, 2014, Ms. Milligan reported her injury to Eric Bartholomew, On-site Coordinator, and Kayla Anderson, Branch Manager, at Team Staffing Solutions. The employer then arranged for Ms. Milligan to be evaluated by Dr. James Milani, D.O. at Great River Business Health. Ms. Milligan had her first appointment with Dr. Milani on June 18, 2014. Dr. Milani diagnosed Ms. Milligan with thoracic strain, muscle spasm, and degenerative joint disease in the thoracic spine. Dr. Milligan concluded that the thoracic strain and the muscle spasm for work related, but that the degenerative joint disease was non-work related.

Dr. Milani released Ms. Milligan to perform light duty effective June 19, 2014. Dr. Milani restricted Ms. Milligan to lifting no more than 5 to 10 pounds, no pushing or pulling, and to limited reaching. The employer immediately placed Ms. Milligan in a light duty assignment at an animal shelter. In the assignment, Ms. Milligan was put to work cleaning kennels, work that she performed with difficulty. Ms. Milligan was also assigned to answer phones and do computer work.

On June 24, Ms. Milligan returned to Dr. Milani for a follow-up appointment. Dr. Milani left the initial restrictions in place and further indicated that Ms. Milligan should be doing no straining, bending, reaching above her head or other activity that would trigger pain. Ms. Milligan was no longer asked to clean kennels, but continued to answer phones and perform computer work.

On July 8, 2014, Ms. Milligan returned to Dr. Milani for a follow-up appointment and Dr. Milani kept the same restrictions in place.

On July 22, 2014, Ms. Milligan returned to Dr. Milani for a follow-up appointment. Dr. Milani increase the weight lifting limit to 20 pounds so long as Ms. Milligan kept her elbows at her side and restricted Ms. Milligan from twisting.

On August 12, 2014, Ms. Milligan returned to Dr. Milani for follow-up appointment. In connection with that appointment, Dr. Milani released Ms. Milligan to restricted duty effective August 12, 2014. Dr. Milani eased the lifting restriction to two-handed lifting not to exceed 25 pounds. Dr. Milani restricted Ms. Milligan to occasional bending. Dr. Milani indicated on the Patient Status Report that Ms. Milligan was released to regular duty effective August 18, 2014. However, Dr. Milani did not share that detail with Ms. Milligan and Ms. Milligan continued under the belief that she was still restricted to performing light-duty work. Dr. Milani had previously referred Ms. Milligan for physical therapy and indicated that she was to continue with the

physical therapy. Dr. Milani indicated that Ms. Milligan's next appointment would occur on August 26, 2014.

On August 19, 2014, Ms. Anderson telephoned Ms. Milligan when she was working at her light-duty assignment. Ms. Anderson asked Ms. Milligan why she was still working at the light-duty assignment. Ms. Milligan told Ms. Anderson that she was still working at the light-duty assignment because Dr. Milani still had her on a light-duty restriction at her next appointment with Dr. Milani was not scheduled to occur until August 26, 2014. Ms. Anderson told Ms. Milligan that the team staffing human resources department had released Ms. Milligan to return to regular duties. Sarah Fiedler, Team Staffing Solutions Human Resources Generalist, had received the August 12, 2014 Patient Status Report that released Ms. Milligan to regular duty effective August 18, 2014 and had directed Ms. Anderson to notify Ms. Milligan that light-duty assignment was ended. Ms. Anderson told Ms. Milligan that the employer would pay her for her work in the light-duty assignment on August 18 and 19, but would not pay her for work in the light-duty assignment beyond that date. Ms. Milligan reiterated that she had not been released by the doctor to return to regular duty and had an appointment scheduled for August 26. Neither Ms. Milligan nor Ms. Anderson mentioned anything about an additional assignment.

Based on notice from Ms. Anderson that the light-duty assignment had ended, Ms. Milligan did not return to that assignment after August 19, 2014. On August 26, 2014, Ms. Milligan returned to Dr. Milani for a follow-up appointment. Dr. Milani notified Ms. Milligan that she was released to return to regular duty and provided her with a Patient Status Report that indicated she was released to regular duty effective August 26, 2014. Immediately after Ms. Milligan left Dr. Milani's office, she went to Team Staffing Solutions and provided them with a copy of the Patient Status Report that released her to return to regular duty. Ms. Milligan asked Ms. Anderson and Mr. Bartholomew whether she could return to her assignment at Siemens. They told Ms. Milligan that Siemens had not held the position. Ms. Milligan asked whether other positions might be available. Ms. Anderson told Ms. Milligan that Team Staffing Solutions had no other work at that time that was suitable for Ms. Milligan. Ms. Anderson told Ms. Milligan that the company would be in touch with her if there was another position. Ms. Anderson did not document her August 26 contact with Ms. Milligan.

On September 10, 2014, Sarah Fiedler, Team Staffing Solutions Human Resources Generalist, sent an email message to Ms. Anderson asking whether Ms. Milligan had asked for additional work when told that her light-duty assignment was no longer available and that she had been released from light duty. Ms. Anderson replied that Ms. Milligan had simply said okay and had hung up when Ms. Anderson called Ms. Milligan at the light-duty assignment. Ms. Anderson further indicated that Ms. Milligan had previously inquired about additional work, but asserted that Ms. Milligan had not asked for additional work when light-duty assignment ended. Ms. Anderson asserted in her email to Ms. Fiedler that she had told Ms. Milligan she was not needed at Siemens at the same time she notified Ms. Milligan that the light-duty assignment was ended.

#### **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.

Iowa Admin. Code r. 871-24.26(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 employer's written end-of-assignment notification policy complies with the requirements of the statute.

When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

In considering an understanding or belief formed, or a conclusion drawn, by an employer or claimant, the administrative law judge considers what a reasonable person would have concluded under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993).

The weight of the evidence in the record indicates that Ms. Milligan's assignment at Siemens effectively ended June 19, 2014, when the employer placed Ms. Milligan in a different, light-duty work assignment. The sole basis for the Siemens assignment coming to an end was the injury Ms. Milligan has sustained in connection with the assignment. Accordingly, there can be no disqualification for benefits that would attach based on the June 2014 separation from the Siemens assignment.

The weight of the evidence indicates that the light-duty assignment ended on August 19, 2014, when Team Staffing laid off Ms. Milligan. The assignment was at the convenience of Team Staffing Solutions, rather than at the convenience of the client business. That by itself takes this matter outside the usual realm of temporary employment situations. Ms. Milligan completed the light-duty assignment on August 19, 2014. She completed it not because she had completed all the work that the client business had for her. Instead, the assignment was completed because Team Staffing Solutions no longer felt obligated to continue the assignment after receiving the August 12, 2014 Patient Status Report that indicated both that Ms. Milligan was to continue on restricted duty effective August 12, 2014 and that Ms. Milligan was released to regular duty effective August 18, 2014. The same document also indicated that Ms. Milligan was to continue with physical therapy and that she was to return on August 26, 2014 for a follow-up appointment. At the time of the August 12, 2014 appointment, the treating physician had not notified Ms. Milligan that she would be released to return to regular duties effective August 18, 2014. Ms. Milligan continued under the reasonable belief that she had not been released to return to regular duty until she met with Dr. Milani on August 26, 2014 and he specifically indicated to her that she was released to regular duty effective that date. Under the circumstances, Ms. Milligan had good cause for not immediately requesting a new work assignment, given her reasonable belief that she was still on work restrictions and the employer's assertion that she was no longer eligible for a light-duty assignment. Ms. Milligan did what a reasonable person would do. She waited for the opportunity clarify whether she had indeed been released to return to regular duty. On August 26, 2014, Ms. Milligan got that clarity and immediately contacted Team Staffing Solutions to inquire about additional work. At that time she was told there was no other work for her. The contact and request for additional work was timely under the circumstances and satisfied the requirements of Iowa Code section 96.5(1)(j).

The employer presented insufficient evidence to rebut Ms. Milligan's testimony concerning her contact with Team Staffing Solutions on August 19 and August 24, 2014. The employer's email communication two weeks or more after the separation is insufficient to rebut Ms. Milligan's credible testimony. The employer had the ability to present testimony through Ms. Anderson or Mr. Bartholomew and elected not to present such testimony.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Milligan's August 26, 2014 separation from the temporary employment agency was for good cause attributable to the temporary employment agency.

Ms. Milligan is eligible for benefits provided she is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The March 10, 2015, reference 01, decision is reversed. The claimant's August 26, 2014 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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