

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MIKE J JASSO

Claimant

APPEAL NO. 13A-UI-12672-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PAYROLL TAX DEPT
LABOR READY MIDWEST INC**
Employer

**OC: 10/06/13
Claimant: Appellant (4)**

871 IAC 24.26(19) – Separation from Temporary Employment
Iowa Code Section 96.5(3) – Work Refusal

STATEMENT OF THE CASE:

Mike Jasso filed a timely appeal from the November 1, 2013, reference 01, decision that denied benefits based on an agency conclusion that he had been discharged for misconduct on October 10, 2013. After due notice was issued, a hearing was held on December 4, 2013. Mr. Jasso participated. Diane Kinsey represented the employer. The parties waived formal notice on the issue of whether Mr. Jasso had refused suitable work without good cause.

ISSUES:

Whether Mr. Jasso voluntarily quit without good cause attributable to the employer or was discharged from the employment in October 2013.

Whether Mr. Jasso refused suitable work without good cause in October 2013.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency and specializes in day labor assignments. The employer's doors open at 5:30 a.m. on Monday through Friday and at 6:00 a.m. on Saturday. Workers seeking day labor assignments are expected to appear at the workplace at the start of business, sign in, and wait to see whether the temporary employment agency had an assignment for them that day. Almost all of the employer's assignments require safety equipment including steel toed boots. Some of the employer's day labor assignments also require a back ground check or a drug test.

Mike Jasso completed a day labor assignment on October 4, 2013. The employer did not have a policy that required Mr. Jasso to contact the employer within a set period to request a further assignment.

The next contact between the parties occurred on October 10, 2013. Mr. Jasso appeared at the appointed time that day, but appeared at the workplace without his steel toed boots. For that

reason, the employer passed over Mr. Jasso as it assigned day labor assignments to other employees. The employer eventually approached Mr. Jasso about working in a day labor assignment that would require him to have his steel toed boots and that would require him to submit to a drug screen. The employer cannot remember the particulars of specific assignment being discussed that day. Mr. Jasso told the employer could not pass the drug test. Mr. Jasso left the workplace and did not return that day.

REASONING AND CONCLUSIONS OF LAW:

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.

Each of Mr. Jasso's day labor assignments constituted a separate employment. By completing the day labor assignment on October 4, 2013, Mr. Jasso completed his contract of hire and was under no obligation to seek further assignments through the employer. Mr. Jasso's separation from the employment that occurred on October 4, 2013, when he completed the assignment was for good cause attributable to the employer and would not disqualify Mr. Jasso for benefits.

The contact on October 10, 2013 did not involve a quit, a discharge or any other type of separation, since the separation from the employment had already occurred six days earlier upon completion of the earlier assignment. The events of October 10, 2013 instead involved a potential refusal of suitable work.

A claimant who fails to accept an offer of suitable employment without good cause is disqualified for benefits until the claimant earns ten times his weekly benefit amount from insured work. See Iowa Code section 96.5(3)(a).

Iowa Administrative Code rule 871 IAC 24.24(1)a provides:

(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work ... it must first be established that a bona fide offer of work was made to the individual by personal contact ... and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

The weight of the evidence indicates that the employer never made a bona fide offer of work on October 10, 2013. The employer was unable to provide any particulars about the purported assignment discussed on October 10, 2013 other than that it required steel toed boots and a negative drug screen. Absent such information concerning the place of the assignment, the work to be performed, the hours of the work, the pay and so forth, the administrative law judge cannot find a bona fide offer of employment. In addition, any purported offer of employment was conditioned on Mr. Jasso having steel toed boots at that time and Mr. Jasso did not have steel toed boots with him at the time of the discussion. Mr. Jasso's decision not to submit to the drug test is of no consequence because there was no bona fide offer of employment on October 10, 2013.

DECISION:

The Agency representative's November 1, 2013, reference 01, decision is modified as follows. The claimant separated from the employment on October 4, 2013, when he completed the day labor assignment and thereby fulfilled his contract of hire. The October 4 separation was for good cause attributable to the employer and would not disqualify the claimant for benefits. There was no voluntary quit, discharge or other separation on October 10, 2013, because the separation from the employment had occurred on October 4. The employer did not make a bona fide offer of employment on October 10, 2013. Thus, there was no refusal of suitable work and no basis for disqualifying the claimant for benefits in connection with the events of October 10, 2013. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css