

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS J CASKEY
Claimant

APPEAL NO. 10A-UI-00258-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

**Original Claim: 04/19/09
Claimant: Respondent (2-R)**

Section 96-4-3 – Eligibility for Benefits

STATEMENT OF THE CASE:

Team Staffing Solutions, Inc. filed a timely appeal from a representative's decision dated December 29, 2009, reference 04, which held the claimant eligible to receive unemployment insurance benefits beginning December 3, 2009, and finding the employer chargeable upon a finding the claimant was still employed part-time working on-call whenever work was available but not performing services in the same pattern of employment as in the base period. After due notice was issued, a telephone conference hearing was scheduled for and held on February 16, 2010. Although duly notified, the claimant did not respond to the hearing notice and did not participate. The employer participated by Ms. Sara Fielder, claims administrator.

ISSUE:

At issue is whether the claimant is still employed part-time or on-call working a pattern of employment different from the base period.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Thomas Caskey began employment with Team Staffing Solutions, Inc. on September 2, 2009, and was assigned to work as a production laborer at the Alaniz Company on a long-term assignment.

On or about November 30, 2009, the claimant was informed by the client employer, the Alaniz Company, that he was "no longer needed." Neither Mr. Caskey nor the Alaniz Company notified Team Staffing Solutions that the claimant's job assignment had ended. The company later determined through other sources that the assignment had ended.

When Mr. Caskey began employment, he signed an agreement with Team Staffing Solutions to notify the temporary employment service within three working days of the end of a job assignment and to make himself available for re-assignment. Although Mr. Caskey had agreed to do so, he did not contact Team Staffing Solutions to inform them that his assignment with Alaniz had come to an end. The temporary employment service thus reasonably concluded that the claimant had voluntarily quit employment per the agreement between the parties and per application of the Iowa Employment Security Law.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not still employed part-time or working on-call.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

In this matter, the employer's witness participated personally and testified under oath that Mr. Caskey was no longer employed by Team Staffing Solutions, Inc. a period of time after his temporary assignment with the Alaniz Company had come to an end on November 30, 2009. The claimant did not continue to be employed part-time or on-call. The claimant had not notified the temporary employment service that his long-term assignment with Alaniz had come to an end, although he had agreed to do so within three working days when he began employment with Team Staffing Solutions, Inc.

The administrative law judge concludes that Mr. Caskey did not remain employed part-time or on-call by this employer and that the employer is not subject to charging on the basis of Mr. Caskey continuing in employment on a part-time or on-call basis working in a pattern of employment different from the base period.

The issue of whether the claimant must repay Unemployment Insurance Benefits is remanded to the Unemployment Insurance Services Division for a determination.

The issue of whether a separation from employment occurred on or about November 30, 2009, is also remanded to the Unemployment Insurance Services Division of Iowa Workforce Development for initial investigation and an appealable determination.

DECISION:

The representative's decision dated December 29, 2009, reference 04, is reversed. The claimant is not eligible to receive unemployment insurance benefits beginning December 3, 2009, and the employer is not subject to charging based upon the finding that the claimant was still employed part-time or working on-call for Team Staffing Solutions, Inc. performing services in a pattern different from the base period. The issue of whether the claimant must repay Unemployment Insurance Benefits is remanded to the Unemployment Insurance Services Division for a determination.

The issue of whether the claimant had a disqualifying separation from employment on or about November 30, 2009, is also remanded to the Unemployment Insurance Services Division for investigation and an appealable determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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