

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK A MUNSON
Claimant

APPEAL NO. 13A-UI-11482-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**L A LEASING INC
SEDONA STAFFING**
Employer

OC: 05/26/13
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 7, 2013, (reference 02) unemployment insurance decision that denied benefits based upon voluntarily quitting the employment. The parties were properly notified about the hearing. A telephone hearing was held on November 7, 2013. Claimant participated. Employer participated through work comp administrator, Chad Baker and company president, Nikki Kiefer.

ISSUE:

Did the claimant quit by not reporting for additional work assignments within three business days of the end of the last assignment?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a temporary cleaning person assigned at Bell Tower Community Retirement from August 27, 2013, and was separated from employment on September 3, 2013. Sedona and Callahan Construction posted separate advertisements for cleaning help. Claimant responded to the Callahan ad and Callahan notified Kiefer at Sedona he was going to hire the claimant. Claimant was confused about who to contact about what. The job was to maintain and clean apartments in Dubuque, Cascade and Elkader. The next day Callahan said he would rather have claimant work at Bell Tower to get that property in order. There was similar work the first day. Then claimant was instructed to use a hand operated carpet cleaner that would eventually be used in the entire facility. After two ten-hour days of use, he began having severe back spasms. He was not accustomed to physical labor as his work history involves administrative desk work. He believed he was not capable of performing these duties and feared a work injury. Callahan agreed and they mutually ended the assignment. Sedona did not provide information for the hearing that claimant signed a notice that he must report within three working days of the end of an assignment pursuant to Iowa Code § 96.5(1)j. Claimant's back spasms took a week to resolve. He did not check back with Sedona for other assignments.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation was with good cause attributable to the employer.

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.

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 § 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 § 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.

Since employer provided no evidence that it presented claimant with a written copy of the reporting policy, claimant was reasonable to opt to look for work elsewhere. Benefits are allowed.

DECISION:

The October 7, 2013, (reference 02) decision is reversed. The claimant's separation from employment was attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible. The benefits withheld shall be paid to claimant. Since employer is not a base period employer, it shall not have any liability during this claim year.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css