

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

DAVID RICO
Claimant

ANNA ENTERPRISES
Employer

APPEAL NO. 23A-UI-08456-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/11/23
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

On September 5, 2023, David Rico (claimant) filed a timely appeal from the August 23, 2023 (reference 06) decision that disqualified the claimant for benefits and that held the employer account of Anna Enterprises (employer account number 330162) would not be charged for benefits, based on the deputy's conclusion the claimant voluntarily quit on July 17, 2023 without good cause attributable to the employer. After due notice was issued, a hearing was held on September 20, 2023. Claimant participated. Virginia Aranda represented the employer and presented additional testimony through William Van Sloan. Exhibits A, B and C were received into evidence. The administrative law judge took official notice of the following IWD administrative records: DBRO, WAGEA, NMRO, KFFV, and EMP1.

ISSUE:

Whether the claimant's 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 in this matter is a temporary employment firm. The employer goes by at least three different names: Superior Staffing, Inc., Anna Enterprises, and Staffing Solutions. Another variation the employer uses is Anna Enterprises doing business as Staffing Solutions. The employer reported the claimant's quarterly wages under the name Anna Enterprises (employer account number 330162).

David Rico (claimant) began his employment with this employer in June 2023. The claimant completed a computer-based application that included the employer name Staffing Solutions at the top of the application. At the time of hire, the employer provided the claimant a business card that identified the employer as Superior Staffing. The employer issued paychecks to the claimant under the name Staffing Solutions. The employer never mentioned the business name Anna Enterprises in its interactions with the claimant.

On June 12, 2023, the employer provided the claimant with a policy document regarding the claimant's obligation to contact the employer at end of an assignment to request a new assignment. The policy statement was set forth on a document that was separate from other policy statement documents. The policy statement stated that upon completion of an assignment, the claimant must contact the employer seeking a new assignment within three working days. The document stated that failure to contact the employer or to accept a new assignment would be deemed a voluntary quit. The document went on to state that Staffing Solutions was the employer and that the claimant may be expected to work a variety of assignments as they become available. The document stated that failure to contact the employer or to accept a new assignment would result in the claimant not being eligible for unemployment insurance benefits. The claimant signed the policy and received a copy of the policy document he signed.

On June 20, 2023, the claimant began a full-time, temp-to-hire work assignment at Iowa Spring in Adel. The work hours were 4:30 p.m. to 3:00 a.m., Monday evening through Friday early morning. The assignment paid \$23.00 an hour.

The claimant has at all relevant times resided in Grimes.

On the morning of July 18, 2023, Iowa Spring notified the employer it was terminating the claimant's assignment after determining the claimant was not a good fit for the assignment. The client business did not elaborate.

On July 18, 2023, temp agency representative Virginia Aranda notified the claimant the Iowa Spring assignment was ended. On that same day, the claimant responded by email and by phone and spoke directly with Ms. Aranda. The employer mentioned a forklift position at United Brick, which was located in Adel a few blocks from Iowa Spring. The employer did not tell the claimant the assignment work hours or wage. In other words, the discussion did not progress to the employer actually offering the assignment. The workdays would have been Monday through Friday, with occasional Saturday overtime. The workdays would have started sometime between 6:30 a.m. and 8:00 a.m. and the shift would be eight hours. The wage would have been \$18.00 an hour. The claimant stated he had some forklift experience but not enough for the United Brick assignment. In the claimant's initial application, the claimant had indicated he was available for forklift work. When speaking with the employer on July 18, the claimant said that he would like an assignment closer to his home in Grimes. The claimant asked how soon the employer would be able to find him such an assignment. Ms. Aranda has a stock response for such inquiries and used it with the claimant. Ms. Aranda said that if she knew the answer to the claimant's question, she would be a millionaire. The employment relationship came to an end on July 18, 2023.

Prior to starting the Iowa Spring assignment, the claimant established an original claim for unemployment insurance benefits that was effective June 11, 2023. The "base period" consists of the four quarters of 2022. The highest earnings base period quarter was the fourth quarter of 2022 during which the claimant was paid \$12,303.01, which averages to \$946.00 a month.

After the Iowa Spring assignment ended, the claimant established an "additional claim" for benefits that Iowa Workforce Development deemed effective July 16, 2023. The claimant's assignment ended and the discussion about the United Brick assignment occurred during the first week of the additional claim. Though the employer never shared with the claimant what the pay for the United Brick assignment would be, a 40-hour week in that assignment would have paid \$720.00, which was substantially less than the claimant average weekly wage during the

highest base period quarter and substantially less than the \$920.00 average weekly wage the Iowa Spring assignment provided.

Iowa Workforce Development scheduled two fact-finding interview that concerned same July 17, 2023 separation.

On August 4, 2023, Iowa Workforce Development Benefits Bureau held a fact-finding interview that included the claimant and Superior Staffing, Inc. (employer account number 268798) as the named parties in interest. The claimant participated. Ms. Aranda represented the employer. After this fact-finding interview, Iowa Workforce Development mailed the August 10, 2023 (reference 05) decision. The reference 05 decision allowed benefits to the claimant, provided the claimant was otherwise eligible and held the employer account of Supervisor Staffing, Inc. could be charged for benefits, based on the deputy's conclusion the claimant had completed and assignment on July 17, 2023 and had contacted the employer within three working days. The employer did not appeal the reference 05 decision.

On August 18, 2023, Iowa Workforce Development Benefits Bureau held a fact-finding interview that included the claimant and Anna Enterprises (employer account number 330162) as the named parties in interest. The claimant did not participate in this fact-finding interview. William Van Sloan, Manager/owner, represented the employer. After this fact-finding interview, IWD Benefits Bureau issued the August 23, 2023 (reference 06) decision that disqualified the claimant for benefits and that held the employer account of Anna Enterprises (employer account number 330162) would not be charged for benefits, based on the deputy's conclusion the claimant voluntarily quit on July 17, 2023 without good cause attributable to the employer. The claimant filed a timely appeal from the reference 06 decision.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)(j) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. (1) 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.

(2) 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.

(3) For the purposes of this paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(b) "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.

Iowa Admin. Code r. 871-24.26(1) 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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See *Wiese v. Iowa Dept. of Job Service*, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. *Id.* An employee acquiesces in a change in the conditions of employment if he or

she does not resign in a timely manner. See *Olson v. Employment Appeal Board*, 460 N.W.2d 865 (Iowa Ct. App. 1990).

The weight of the evidence in the record establishes a July 18, 2023 separation from Anna Enterprises that was for good cause attributable to the employer. Though the employer added some language to its end-of-assignment notification policy that is not supported by the statute, the policy substantially complied with the requirements set forth in Iowa Code section 96.5(1)(j). The claimant completed an assignment on July 18, 2023. The claimant contacted the employer that same day seeking a new assignment. The employer mentioned a potential assignment, but omitted several material pieces of information, such as hours of employment and the wage, and therefore never made a bona fide offer of a new assignment. Even if the employer had made a bona fide offer of a new assignment, the assignment was not suitable within the meaning of the law due to the significantly reduced pay relative to what the claimant had been making in the Iowa Spring assignment. The claimant would have had good cause to decline the assignment, not based on the location, but based on the substantial reduction in pay and the change of shift., both of which would have constituted substantial changes in the conditions of the employment. The claimant is eligible for benefits, provided he is otherwise eligible. The employer account of Anna Enterprises may be charged for benefits paid to the claimant.

DECISION:

The August 23, 2023 (reference 06) decision is REVERSED. The claimant's separation from the temporary employment agency was with for good cause attributable to the temporary employment agency. The separation was effective July 18, 2023. The claimant is eligible for benefits provided he is otherwise eligible. The employer's account may be charged.



James E. Timberland
Administrative Law Judge

September 28, 2023
Decision Dated and Mailed

jt/te

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.