IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

NATHAN D FISHER
Claimant

EXPRESS SERVICES INC
Employer

APPEAL NO. 15A-UI-00313-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/14/14
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Nathan Fisher filed a timely appeal from the January 6, 2015, reference 03, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on an Agency conclusion that Mr. Fisher had voluntarily quit on December 10, 2014 without good cause attributable to the employer. After due notice was issued, a hearing was held on February 3, 2015. Mr. Fisher participated and presented additional testimony through Lisa Kaster. Jody Korleski, Staffing Consultant, represented the employer.

ISSUE:

Whether the claimant's December 10, 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: Express Services, Inc., is a temporary employment agency. Nathan Fisher performed work for the employer in a single, full-time temp-to-hire work assignment at Winnebago Industries in Charles City. Mr. Fisher started the assignment in July 2014 and last appeared for work on December 11, 2014. Mr. Fisher's day-to-day work in the assignment was supervised by Leroy White, a Lead employed by Winnebago Industries. Express Services Staffing Consultant Chelsea Thompson placed Mr. Fisher in the assignment. Mr. Fisher's usual work hours in the assignment were 6:00 a.m. to 2:30 p.m., Monday through Friday. Leading up to Mr. Fisher's last day in the assignment, production had slowed and Winnebago would sometimes send Mr. Fisher home early.

On December 11, 2014, Mr. Fisher appeared for work as scheduled. When Mr. Fisher arrived, Mr. White was standing by the office and motioned Mr. Fisher over. Mr. White told Mr. Fisher that production was slow and that Winnebago would recall Mr. Fisher to the assignment when it got busy. Mr. Fisher concluded he had been laid off from the assignment. Mr. Fisher asked Mr. White to give him a good reference.

At about 3:30 p.m., Mr. White telephoned Express Services to notify the temporary employment firm that the assignment was ended. Mr. White spoke to Ms. Thompson. Ms. Thompson asked why Mr. Fisher had waited to 3:30 p.m. to contact Express Services. Mr. Fisher thought he was just complying with the employer's end-of-assignment notification requirement. Ms. Thompson made reference to Mr. Fisher's attendance in the assignment. Mr. Fisher said he was confused by the reference to his attendance after Mr. White had led him to believe he was laid off. Ms. Thompson said she would look into the matter. Mr. Fisher asked Ms. Thompson whether Express Services had another assignment for him in the Charles City area and Ms. Thompson told Mr. Fisher she had nothing for him at the time.

On or about December 11, 2014, Ms. Thompson conferred with the human resources manager at Winnebago. The employer asserts that Winnebago considered Mr. Fisher to be absent on December 11 and did not desire to have him return. After conferring with the Winnebago human resources manager, the employer took the position that Mr. Fisher should not have relied on Mr. White's statement that he was laid off, should have immediately contacted Express Services before leaving the workplace on December 11, and that Mr. Fisher had quit the assignment. Mr. Fisher had not quit the assignment. Mr. Fisher's fiancé was a Winnebago employee assigned to the same shift Mr. Fisher had been working. The pair carpooled together. Mr. Fisher had been interested in gaining permanent employment with Winnebago.

REASONING AND CONCLUSIONS OF LAW:

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).

The employer failed to present testimony from anyone with personal knowledge of Mr. Fisher's employment and his separation from the employment.

Workforce Development rule 871 IAC 24.1(113) provides as follows:

> Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.
> a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory–taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.
> b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.
> c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.
> d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992).

In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

The evidence in the record fails to support the employer's assertion, in the alternative, that Mr. Fisher voluntarily quit the assignment. Mr. Fisher reported for work on December 11 as scheduled and the supervisor sent him away. 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 establishes that Mr. Fisher acted reasonably in concluding that he was laid off from the assignment when his supervisor told him as much. That there might have been a miscommunication between the Winnebago supervisor, the Winnebago human resources manager, and/or Express Services is not attributable to Mr. Fisher, who reasonably concluded that he was laid off and acted reasonably in contacting Express Services to notify the employer that the assignment had ended. The employer had presented insufficient evidence to establish that Mr. Fisher concluded or acted unreasonably. Mr. Fisher's separation from the temp assignment was a layoff and did not disqualify him.

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.

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 has presented insufficient evidence to establish that its end-of-assignment notification policy complied with the requirements of the statute. In any event, Mr. Fisher was in contact with the employer to request further work the same day he reasonably concluded the assignment had ended. The employer has presented insufficient evidence to rebut Mr. Fisher's assertion that he did indeed express interest in additional work in the Charles City area and that Ms. Thompson told him there was none.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Fisher's December 11, 2014 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Mr. Fisher is eligible for benefits provided she is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Fisher.

DECISION:

The January 6, 2015, reference 03, decision is reversed. The claimant's December 11, 2014 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

_____
James E. Timberland
Administrative Law Judge

_____
Decision Dated and Mailed

jet/pjs