IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JIMMY L PENNY
Claimant

LA LEASING INC
SEDONA STAFFING
Employer

APPEAL NO. 08O-UI-02798-HT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/09/07 R: 04
Claimant: Appellant (1)

Section 96.5(1)j – Quit/Temporary

STATEMENT OF THE CASE:

The claimant, Jimmy Penny, filed an appeal from a decision dated January 10, 2008, reference 04. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on February 5, 2008, in Appeal 08A-UI-00669-HT. The decision issued in that case was favorable to the claimant and the employer filed an appeal to the Employment Appeal Board.

The board remanded the matter for the purpose of taking testimony on whether the employer was in full compliance with the provisions of Iowa Coe 96.5(1)j. A new hearing was held in the current case on April 7, 2008. The claimant participated on his own behalf. The employer, Sedona Staffing, participated by Unemployment Benefits Administrator Colleen McGuinty and Area Manager Kathy Hutchinson.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Jimmy Penny was employed by Sedona Staffing from January 16 until December 13, 2007. His last assignment was at Henderson Manufacturing and ended December 13, 2007. Mr. Penny did not notify Sedona Staffing of the end of his assignment nor did he request another one.

At the hearing February 5, 2008, the employer maintained the claimant signed a notice at the time of hire that informed him of the requirement to contact Sedona Staffing within three working days of the end of each assignment to request more work. Failure to do so would be considered a voluntary quit. Mr. Penny denied any knowledge of that requirement and the employer did not provide any supporting documentation.

At the subsequent hearing, the claimant's testimony was more equivocal as to whether he signed and received the document notifying him of the requirement to contact the employer within three working days of the end of each assignment. He did not recall signing anything and

"probably tossed" any documents he was given. The employer's testimony was again unsupported by any copy of the document itself, but Ms. McGuinty was firm the document had been signed by the claimant and he was given a copy.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

At the hearing February 5, 2008, the claimant acknowledged he did not contact the employer within three working days of the end of his assignment at Henderson Manufacturing. He denied knowing he was required to do so. The employer's assertion Mr. Penny signed and acknowledged receipt of this requirement in writing had not been supported by any documentation provided to the administrative law judge. The employer had failed to rebut the claimant's testimony he was never advised of this requirement. Under the provisions of the above Code section, disqualification may not be imposed without evidence of the written notification.

At the hearing on April 7, 2008, the employer again did not submit to the Appeals Section for consideration by the administrative law judge, a copy of the document it alleged the claimant to have signed. The employer believed since a copy was sent to the Employment Appeal Board with its appeal letter, the board was then responsible for sending a copy to the claimant. However, the board does not hold a new hearing and does not accept evidence or testimony not submitted at the appeal hearing. It therefore does not send copies of any documents submitted by one party to the opposing party as is done by the Appeals Section.

Just as the board may not consider new evidence submitted after the appeal hearing, the administrative law judge cannot accept evidence submitted to the board after the appeal hearing record has been closed. The parties must submit evidence to be admitted into the hearing to the Appeals Section so that copies may be mailed to the opposing party prior to the hearing. The administrative law judge considers there is doubt as to whether the claimant signed any such document, as the opportunity to examine any documentation was not afforded to either the judge or the claimant at either appeal hearing.

However, the employer was afforded a second opportunity to present its case, and at the second hearing the claimant was more equivocal as to whether he signed the document and received a copy. The employer maintained its firm assertion the document was signed and received. The administrative law judge must, therefore, consider these additional factors and resolves the doubt in favor of the employer. The claimant acknowledged he did not keep any of the documents presented to him at the time of hire and "probably tossed" them. The employer's reliance on its records must be given more weight.

The claimant did not properly notify the employer of the end of his assignment and request more work as required by the above Code section. He is therefore a voluntary quit without good cause attributable to the employer and disqualified.

DECISION:

The representative's decision of January 10, 2008, reference 04, is affirmed. Jimmy Penny is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

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Bonny G. Hendricksmeyer
Administrative Law Judge

_____
Decision Dated and Mailed

bgh/kjw