

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TONGOR MABIAH
Claimant

APPEAL NO. 23A-UI-12153-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

**OC: 11/26/23
Claimant: Appellant (2)**

Iowa Code Section 96.5(1)(j) – Separation From Temporary Employment
Iowa Admin. Code r. 871-24.26(19) – Fulfillment of the Contract of Hire

STATEMENT OF THE CASE:

On December 27, 2023, Tongor Mabiah (claimant) filed a timely appeal from the December 22, 2023 (reference 01) decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion the claimant voluntarily quit on August 23, 2023 without good cause attributable to the employer. After due notice was issued, a telephone hearing was held on January 24, 2024. The claimant participated. Sarah Fiedler represented the employer. Exhibits 1, 2, 3 and A were received into evidence.

ISSUES:

Whether the claimant was laid off, was discharged for misconduct in connection with the employment, or voluntarily quit without good cause attributable to the employer.
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:

On April 20, 2023, Tongor Mabiah (claimant) commenced a full-time, temp-to-hire assignment at Airgas. The workdays were Monday through Saturday and sometimes also included Sunday. The claimant last performed work in the assignment on Tuesday, August 22, 2023. Leading up to that date, Airgas had been considering hiring the claimant as a direct employee. However, Airgas concluded the claimant did not meet one or requirements for direct employment and elected not to hire the claimant. In connection with that determination, Airgas notified Team Staffing that it was ending the assignment.

On the morning of August 23, 2023, Team Staffing Account Representative Suzie Boutwell called the claimant and told him not to return to the assignment. Ms. Boutwell is no longer with Team Staffing but documented the contact in the employer's contact log. See Exhibits 1 and 3.

While Ms. Boutwell documented that the claimant did not ask for more work during the August 23, 2023 telephone call, the claimant asserts that he first asked why the assignment was ended and then asked for additional work.

The claimant's next contact with Team Staffing occurred on August 29, 2023, when the claimant went to the Team Staffing office in search of additional work. Upon his arrival, the claimant asked for additional work. A Team Staffing representative directed the claimant to sign an employee sign-in book. The Team Staffing representative told the claimant that the employer did not have an additional assignment for the claimant at the moment, but would call the claimant if there was additional work available.

On April 19, 2023, immediately before the claimant commenced the Airgas assignment, the employer had the claimant electronically sign to acknowledge a Team Staffing Solutions, Inc. document titled Notification Requirement Availability for Work Assignments. The claimant recalls signing hardcopy documents but does not recall electronically signing any documents. The employer asserts the document would have been reviewed with the claimant, that the claimant would have electronically signed, and that a copy of the document would have been emailed to the claimant. The policy document in question states:

Notification Requirement Availability for Work Assignments

I understand and acknowledge that upon completion of an assignment, I must contact Team Staffing Solutions, Inc. and/or Team Staffing Iowa to request placement in a new assignment within three (3) business days of completion of, and/or notification of completion of assignment, by either the Client Company or the Staffing Agency, or I will be deemed a voluntary quit and further assignments may not be offered.

In understand that in order to remain active with Team Staffing Solutions/Team Staffing Iowa and to show availability/ability to work, I must maintain contact with Team Staffing Solutions/Team Staffing Iowa by checking in at the minimum of once per week.

I understand that failure to follow call in procedures to both Team Staffing Solutions/Team Staffing Iowa and to the client company to which I am assigned, for an active assignment, and failure to report to work for three days without contact, consecutive or non-consecutive days, may be considered a voluntary quit from both the assignment and the Staffing Agency.

I understand that my failure to contact Team Staffing Solutions/Team Staffing Iowa or to follow the above guidelines, may affect my eligibility for unemployment insurance benefits.

My signature below acknowledges that I understand the above requirements and have been provided a copy of the policy to retain for my records.

[Bold text is from the original.] The document includes an electronic signature for the claimant and for Jodey DeMoss, a Team Staffing Account Manager. Ms. DeMoss is no longer with Team Staffing.

The document the employer asserts the employer reviewed with and presented to the claimant indicates on its face that it was revised in 2022. The "revised" policy replaces a clear and concise end-of-assignment notification policy the employer used for many years, a policy

statement that closely tracked the notification language required by Iowa Code section 96.5(1)(j).

The claimant is able to read English, but English is the claimant's second language.

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.

The evidence in the record establishes an August 23, 2023 separation with good cause attributable to the employer. The claimant completed the Airgas assignment effective August 23, 2023 and thereby fulfilled the contract of hire.

The employer's "revised" Notification Requirement Availability for Work Assignment policies does not comply with the notice requirements of Iowa Code section 96.5(1)(j). Therefore, cannot provide a basis for disqualifying the claimant for unemployment insurance benefits. The statute requires that the employer provide the claimant "a *clear and concise* explanation of the notification requirement and the *consequences* of a failure to notify." [Emphasis added.] Both the explanation of the requirement and consequences of the failure to comply must be clearly and concisely stated.

The employer's "revised" policy replaces a clear and concise end-of-assignment notification policy the employer used for many years. The earlier policy statement was exemplary in how well it tracked and complied with the notification language required by Iowa Code section 96.5(1)(j).

The "revised" policy adds an attendance policy, absence notification requirements, a weekly check-in requirement, and other provisions that were absent from the earlier "clear and concise" policy statement. These additional policies distract from and detract from the "clear and concise" notice the statute requires regarding the end-of-assignment notice requirement.

The new policy statement conflates compliance with the employer's various policies with the end-of-assignment contact required by the statute. The new policy confusingly states that failure to comply with "any of the above guidelines" could affect eligibility for unemployment insurance benefits, but does not say how.

The employer's revised policy has the effect of obscuring the end-of-assignment notification requirement in a manner that denies employees and claimant's the notice the statute requires before the statute may be used as a basis for disqualifying a claimant for unemployment insurance benefits. This employer is a seasoned participant in unemployment insurance matters. There would be no reasonable basis for the employer to conclude that IWD or the UI Appeals Bureau desired such revision. On the contrary, based on the employer's many years of experience in unemployment insurance matters, there would be every reason for the employer to leave the prior clear and concise end-of-assignment policy statement as it was to continue compliance with Iowa Code section 96.5(1)(j).

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that claimant's August 23, 2023 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.

DECISION:

The December 22, 2023 (reference 01) decision is REVERSED. The claimant fulfilled the contract of hire on August 23, 2023. The claimant's August 23, 2023 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.



James E. Timberland
Administrative Law Judge

January 25, 2024
Decision Dated and Mailed

JET/jkb

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
6200 Park Ave Suite 100
Des Moines, Iowa 50321
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
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: 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.