

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAMAR E WILDER
Claimant

APPEAL NO: 06A-UI-09005-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

USA STAFFING INC
LABOR WORLD OF IOWA
Employer

OC: 09/18/06 R: 03
Claimant: Respondent (1-R)

Section – 96.5(1)j – Temporary Employment

STATEMENT OF THE CASE:

USA Staffing, Inc. filed an appeal from a representative's decision dated August 31, 2006, reference 09, which allowed benefits to Kamar Wilder. After due notice was issued, a hearing was held by telephone on September 25, 2006. Mr. Wilder participated personally and offered additional testimony from Amy Berdecia. The employer participated by Doug Meinders, Branch Manager, and Ami Merkle, Employee Coordinator.

ISSUE:

At issue in this matter is whether Mr. Wilder was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Wilder was employed by USA Staffing, Inc., a temporary placement service, beginning March 29, 2006. He was assigned to work full time for Traer Manufacturing. He was removed from the assignment on or about August 4 because of his attendance.

Mr. Wilder received a call at work from his wife on August 3 and had to leave work early. He was absent on August 4 because he was having back problems and properly reported the intent to be absent. An individual is subject to discharge if he misses more than three days of an assignment. On the morning of August 7, Mr. Wilder was notified that his assignment with Traer Manufacturing was over. Later in the day, he went to USA Staffing, Inc. to provide a doctor's statement for his absence of August 4. He was not offered further work at that time.

The employer has a staffing, attendance and notification policy employees are required to sign. The form advises employees to be on time and that more than three absences will be grounds for discharge. The form also advises that the employee has to seek reassignment within three days. It does not specify working days and does not indicate when the three-day period begins.

The employer does not have a record of Mr. Wilder making contact again until August 18. Thereafter, he was offered work on August 21, 23, 24, 25, and 30. None of the offers were accepted. Only the offer of August 24 has been adjudicated by Workforce Development.

REASONING AND CONCLUSIONS OF LAW:

Mr. Wilder was employed by a temporary placement firm and was released from his assignment on August 7, 2006. His discharge from the assignment was due to his attendance. The employer did not have information as to the dates of the absences and whether they were properly reported. The employer's evidence failed to establish that he was excessively absent on an unexcused basis. The employer failed to establish that Mr. Wilder's separation from Traer Manufacturing was due to misconduct. The fact that he had more absences than allowed is not sufficient to establish misconduct.

As an employee of a temporary placement firm, Mr. Wilder was not required to seek reassignment unless the provisions of Iowa Code section 96.5(1)j were satisfied. The law requires the temporary placement firm to give written notice that the individual has three working days from the end of an assignment in which to seek reassignment. The notice provided to Mr. Wilder is not sufficiently clear as to his responsibilities. It does not specify that his three days are working days rather than calendar days. The notice does not specify that the three-day period is in relation to the end of an assignment. Given the lack of clarity in the employer's form, the administrative law judge concludes that it does not comply with the provisions of section 96.5(1)j. Therefore, it cannot form the basis of a disqualification from benefits.

The employer has offered work to Mr. Wilder on several occasions since his August 7 separation. However, he has not accepted any of the offers. One of the offers was for a long-term assignment and paid \$10.00 per hour, the amount he listed as acceptable when he applied for work with USA Staffing, Inc. This matter shall be remanded to Claims for an investigation and determination regarding the refusals of work.

DECISION:

The representative's decision dated August 31, 2006, reference 09, is hereby affirmed as to result. Mr. Wilder was separated from employment on August 7, 2006 for no disqualifying reasons. Benefits are allowed, provided he satisfies all other conditions of eligibility. This matter is remanded to Claims for determinations regarding work refused by Mr. Wilder after August 18, 2006.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw