

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LONNIE D ROGERS

Claimant

APPEAL NO. 10A-UI-09392-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

LABOR READY MIDWEST INC

Employer

OC: 02/21/10

Claimant: Respondent (1)

Section 96.5-2-A – Misconduct

Section 96.5-1 – Voluntary Quit

Section 96.5-1-J – Separation from Temporary Employment

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated June 18, 2010, reference 04, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 17, 2010. Claimant participated. Employer participated by Kathy Archer, Assistant Manager. The record consists of the testimony of Lonnie Rogers; the testimony of Kathy Archer; and Employer's Exhibits 1-14. Official notice is taken of agency records.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a temporary employment agency. One of its clients is the city of Muscatine. The claimant was serving a sentence for OWI when he made an application for temporary employment. The claimant's application was made on October 21, 2009. The claimant did not have a driver's license, but he and several other individuals wanted to obtain temporary work with the City of Muscatine Sanitation Department. If the sanitation department needed extra workers, the claimant would be called directly by the sanitation department. The claimant obtained a work permit and started taking temporary assignments with the city of Muscatine. The claimant never called the employer for work and did not appear the employer's site in Davenport, Iowa, when he was able to work.

The claimant was called periodically for assignments directly by the sanitation department. He had a one-day assignment on March 6, 2010. He had another assignment on April 30, 2010.

He expects to be called again to work over the Labor Day weekend. He is looking for work with other employers and has not restricted himself to assignments at the sanitation department.

The employer's account is not being charged for benefits. The employer is not a base period employer for the claimant.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1 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.

871 IAC 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 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.

The evidence in this case established that the claimant has accepted temporary assignments from the employer with the city of Muscatine in its sanitation department. Although Labor Ready Midwest is the claimant's employer, the claimant did not receive his work assignments directly from the employer but rather through the employer's client—the city of Muscatine. An employee of the city calls the claimant whenever work is available for the claimant. The claimant has never been required to call the employer or report for work at the employer's facility in Davenport, Iowa. The claimant is unable to come to Davenport because he does not have a driver's license and can only take assignments in the city of Muscatine.

The original claim date in this case is February 21, 2010. Since that original claim was filed the claimant has had two other assignments with the city of Muscatine. He expects to work again over the Labor Day weekend. The claimant has not voluntarily quit and while Labor Ready is his employer, the employer has never required the claimant to call in or appear at its site. The claimant is still considered an employee of Labor Ready and is not working due to lack of work. Labor Ready, however, is not a base period employer and is not presently being charged for the benefits paid to the claimant. If the claimant files a new claim, the employer may be charged for benefits in the future.

DECISION:

The decision of the representative dated June 18, 2010, reference 04, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css