

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

COLIN J CONNER
Claimant

APPEAL NO. 09A-UI-09891-E2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**L A LEASING INC
SEDONA STAFFING**
Employer

**OC: 01/11/09
Claimant: Respondent (1)**

871 IAC 24.26(19) – Voluntary Quit Spot or Casual Labor
Section 96.5-1-j – Voluntary Leaving – Temporary Employment

STATEMENT OF THE CASE:

Employer filed an appeal from the July 7 2009, reference 03, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on July 28, 2009. The claimant participated. The employer participated through Colleen McGuinty, Unemployment Insurance Benefits Manager and Sharon Hagedorn, Branch Manager Cedar Falls Office. Exhibit 1 was admitted into evidence.

ISSUE:

The issue is whether claimant voluntarily quit his work from a temporary employment firm or whether the claimant completed his spot labor assignment.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant was hired by Sedona Staffing in February 2009. At the time he applied for work he was provided a copy of a document entitled "Availability Statement." That document provides that an employee is required upon completion of an assignment to notify Sedona Staffing within three business days about the end of the assignment and request placement on a new assignment. The claimant started work as a general labor/fork truck operator for Prinsco on February 9, 2009. Prinsco notified Sedona Staffing on May 22, 2009 the claimant was not needed any more at his assignment. Ms. Hagedorn called the claimant on May 26 and left a message for the claimant about his employment status. The claimant called back on May 26, 2009 and was informed by Ms. Hagedorn his assignment was over. The employer did not offer a reassignment and the claimant did not ask for a reassignment during their phone conversation of May 26, 2009. The claimant was under the understanding he was just going to be on temporary lay-off from Prinsco so he was going to contact them to find out why the assignment had ended.

The employer did not know the reason Prinsco requested an employee in February 2009. Ms. Hagedorn did not know whether the employer was hiring to supplement their workforce due to absences, seasonal workloads or any other particular reason.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not voluntarily quit his employment.

There are two possible sections of Iowa law that may be applicable to this claim. The first governs some employees of temporary agencies.¹

The purpose of the Iowa Code section 96.5-1-j is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of each temporary assignment so they may be reassigned and continue working. A claimant who is a temporary employee and was provided correct notification at the start of employment, must within three working days after the completion of the assignment notify the temporary employment agency that it has ended and request reassignment. The three-day notice period may be extended by good cause. Before applying the statute, an examination of the facts is required to determine if the employer and the claimant meet the definitions under the statute. The employer to be covered must be a "temporary employment firm." Iowa Code section 96.5-1-j(2) A temporary

¹ 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 workforce 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.

employment firm is defined as a person engaged in the business of hiring temporary employees. "Temporary employees are defined as: '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." Iowa Code section 96.5-1-j(1).

The second governs spot or casual temporary labor.²

The claimant does not meet the definition of a temporary employee. There is no evidence the claimant was hired to work for Prinsco due to absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects. The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6). In this case the employer has entered into an agreement with Prinsco to hire an employee through their agency. The claimant is not in a position to request information from Prinsco about why he was hired. The employer, Sedona Staffing is in the best and most reasonable position to find out the information. If the employer wants to assert that the claimant is a temporary employee as defined by Iowa Code section 96.5-1-j the employer has the burden of proof to show it is applicable. The employer is the party that "will suffer the loss" if the issue of whether the claimant is a "temporary employee" under Iowa Code section 96.5-1-j is not established.

The law requires an employee who is covered 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." Iowa Code section 96.5-1-j. The claimant did receive this document. However, the employer did not prove claimant was a temporary employee as defined by Iowa Code section 96.5-1-j, and it is not determinative as to whether the claimant voluntarily quit or is qualified for unemployment benefits.

The claimant is properly considered a casual or spot labor worker under 871 IAC 24.26(19). The claimant was assigned to and completed a specific assignment. The claimant had no obligation to report back to the employment agency at the end of the assignment. The employer did not offer the claimant further employment.

² 871 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.

DECISION:

The July 7, 2009, reference 03, decision is affirmed. The claimant is eligible to receive unemployment insurance benefits, provided the claimant meets all other eligibility requirements.

James Elliott
Administrative Law Judge

Decision Dated and Mailed

jfe/css