

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DJIBY DIAWARA

Claimant

APPEAL NO. 13A-UI-01348-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC

Employer

OC: 12/23/12

Claimant: Respondent (2-R)

Section 96.5-1-f – Leaving Employment for Compelling Reasons and
Returning to Employment Within Ten Working Days

STATEMENT OF THE CASE:

Team Staffing Solutions, Inc. filed a timely appeal from a representative's decision dated January 30, 2013, reference 03, which held claimant eligible to receive unemployment insurance benefits finding the claimant left work on January 11, 2012 for compelling personal reasons, that he left for no more than ten days unless additional time was approved and that the claimant immediately returned ready to start work but no work was available. After due notice was provided, a telephone hearing was held on March 6, 2013. Claimant participated. The employer participated by Ms. Sarah Fiedler, Claims Administrator and Interpreter, Mr. Chris Chamillo.

ISSUE:

The issue is whether the claimant left employment for compelling personal reasons for no more than ten days unless additional time was approved and immediately after returned and no work was available.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Djiby Diawara began employment with Team Staffing Solutions, Inc. on May 9, 2011. The claimant was assigned to work at the All Steel Company on an ongoing assignment. Mr. Diawara left his employment with Team Staffing Solutions, Inc. on January 11, 2012 to return to Africa because his mother needed medical procedures. At the time of leaving, Mr. Diawara did not indicate a return date. Team Staffing Solutions, Inc.'s records show that the claimant did not attempt to return to his employment with that company until August 6, 2012. Team Staffing Solutions, Inc. had no contact from the claimant within ten working days of his leaving on January 11, 2012 and the claimant did not request an extension of the time that he was going to be gone from employment. Because the claimant had abandoned his job assignment at All Steel, the assignment had been given to other workers. No work was available to the claimant when he returned to work some eight months after leaving his employment with the company.

It is the claimant's position that he contacted Team Staffing Solutions, Inc. by phone in July 2012 when he had returned from Africa. It is the claimant's contention that because the employer did not have work for him at that time that his previous voluntarily quitting his employment should not be considered.

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.

Iowa Code section 96.5-1-f 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:

f. The individual left the employing unit for not to exceed ten working days, or such additional time as may be allowed by the individual's employer, for compelling personal reasons, if so found by the department, and prior to such leaving had informed the individual's employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist the individual returned to the individual's employer and offered the individual's services and the individual's regular or comparable work was not available, provided the individual is otherwise eligible; except that during the time the individual is away from the individual's work because of the continuance of such compelling personal reasons, the individual shall not be eligible for benefits.

The evidence in the record clearly establishes that the claimant left work on January 11, 2012 for compelling personal reasons to assist a family member who needed medical attention. The evidence also clearly establishes that the claimant did not return to Team Staffing Solutions, Inc. within ten days to offer his services in employment and that the claimant did not request an extension of the ten days allowed under the statutory provision, section 96.5-1-f. The claimant did not return to the United States until July 2012 approximately eight months after he had relinquished his job with Team Staffing Solutions, Inc.

Because the claimant did not return within ten days as required by the law and did not request an extension within the ten days, the claimant is considered to have voluntarily quit his employment on January 11, 2012 for reasons that are not attributable to Team Staffing Solutions, Inc. Work continued to be available to the claimant at that time, however, the claimant chose to quit and did not return or contact the employer for several months thereafter. The claimant is, therefore, disqualified for the receipt of unemployment insurance benefits.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated January 30, 2013, reference 03, is reversed. Claimant left employment for personal reasons that were not attributable to the employer for more than ten days and did not request additional time to be approved by the employer as required by the provisions of section 96.5-1-f. Claimant is disqualified from receiving unemployment insurance benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and meets all other requirements of Iowa law. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs