

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIC SMITH
Claimant

APPEAL NO. 10A-UI-03392-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LABOR READY MIDWEST INC
Employer

**Original Claim: 01/10/10
Claimant: Respondent (1)**

871 IAC 24.25(19) – Temporary and Casual Employment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 16, 2010, reference 01, decision that allowed benefits in connection with a separation that occurred on or about December 23, 2009. After due notice was issued, a hearing was held on April 16, 2010. Claimant Eric Smith did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Taylor Dornbusch, Customer Service Representative, represented the employer. Exhibits One through Four were received into evidence.

ISSUE:

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: The employer is a temporary employment agency. Eric Smith performed work in many day-labor assignments for the employer and last performed work in such an assignment on December 23, 2009. Mr. Smith completed the assignment. On December 24, 2009, Mr. Smith notified the employer that he was moving to Chicago and was not available for any further day-labor assignments.

The employer has a written end-of-assignment notification policy that obligated Mr. Smith to contact the employer within three working days of the end of an assignment. The policy statement is five paragraphs long, takes up an entire page, and includes part of the text of Iowa Code section 96.5(1)(j). The policy statement includes the following run-on and self-contradictory statement:

By signing below, I acknowledge receiving this form and the above statement of Iowa's unemployment laws, and further acknowledge that I have read and understand these laws and have had the opportunity to request a copy of this form.

The employer representative was not with the employer at the time Mr. Smith commenced performing work for the employer and cannot say whether Mr. Smith actually received a copy of the acknowledgement form.

REASONING AND CONCLUSIONS OF LAW:

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.

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.

The weight of the evidence in the record indicates that Mr. Smith was employed as a day-laborer and completed each assignment at the end of each day's work. Mr. Smith completed his last assignment with the employer on December 23, 2009. Mr. Smith was in contact with the temporary employment agency the next day to indicate he would not be available for additional assignments.

The employer's end-of-assignment notification policy does not fulfill the requirements of the statute. Contrary to the requirements of the statute, the employer's policy statement is not "a clear and concise explanation of the notification requirement and the consequences of a failure to notify." Instead, the employer buried the required policy statement in a full-page, five-paragraph, single-spaced document. In addition, the acknowledgement paragraph appears to state two things at once. On the one hand, it states that the employee is acknowledging receiving the form. But, at the end of the run-on sentence, it states that the employee has "had the opportunity to *request* a copy this form." [Emphasis added.] The employer representative cannot say with any certainty whether the employer provided Mr. Smith with a copy of the policy statement.

Based on the evidence in the record, the administrative law concludes that the employer has not fulfilled the requirements of the statute and, therefore, cannot claim the benefit of the statute to deny the claimant unemployment insurance benefits. At the time Mr. Smith completed his final day-labor assignment, he completed the contract of hire and was under no obligation to continue to seek assignments through the employer.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Smith's separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Mr. Smith is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Smith.

DECISION:

The Agency representative's February 16, 2010, reference 01, decision is affirmed. The claimant's 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 paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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