

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EPIFANIO MONDRAGON
Claimant

APPEAL NO. 12A-UI-13685-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RIVERSIDE STAFFING SERVICES INC
Employer

OC: 09/23/12
Claimant: Respondent (1-R)

871 IAC 24.26(19) – Fulfillment of the Contract of Hire

STATEMENT OF THE CASE:

The employer filed a timely appeal from an unemployment insurance decision dated November 6, 2012, reference 01, that allowed benefits in connection with a September 28, 2012 separation and that held the employer's account could be charged. A telephone hearing was scheduled for December 17, 2012. Karrie Minch, Senior Recruiter, represented the employer. The claimant also did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate in the hearing.

ISSUE:

Whether Mr. Mondragon's September 28, 2012 separation from the temporary employment agency was for good cause attributable to the employer. It was.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency. Epifanio Mondragon performed work for the employer in a full-time, temporary work assignment at Centro in East Moline. Mr. Mondragon completed the assignment on September 28, 2012, when Centro no longer needed his services. A Riverside Staffing representative notified Mr. Mondragon on that day that the assignment was done. Mr. Mondragon expressed a desire for further work, but the employer did not have any additional work for him at that time.

The employer does not have a policy that directs employees to contact the employer within three working days of the end of an assignment to request additional work. Instead, the employer had a provision in its application that tells the employee to check in weekly.

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 employer's policy does not comply with the requirements of Iowa Code section 96.5(1)(j). The employer's policy does not direct the employee to contact the employer within three working days of the end of an assignment to request additional work. The employer's policy is not set out as a separate, stand-alone document. Because the employer's policy does not comply with Iowa Code section 96.5(1)(j), the employer cannot claim the benefit of that statute. Instead, Mr. Mondragon fulfilled his contract of hire, his obligation to the employer, when he completed the assignment on September 28, 2012. Mr. Mondragon was under no obligation to see further work through the employer. Mr. Mondragon's September 28, 2012 separation was for good cause attributable to the employer. Mr. Mondragon is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

DECISION:

The Agency representative's November 6, 2012, reference 01, decision is affirmed. The claimant's September 28, 2012 separation was for good cause attributable to the employer. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

This matter is remanded to the Claims Division for determination of whether the claimant has been available for work since he established his claim for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs