

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DALLAS W KYLE
Claimant

APPEAL NO. 10A-UI-09510-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

OC: 12/13/09
Claimant: Respondent (1)

Section 96.5(1)j – Quit/Temporary

STATEMENT OF THE CASE:

The employer, Team Staffing, filed an appeal from a decision dated June 25, 2010, reference 04. The decision allowed benefits to the claimant, Dallas Kyle. After due notice was issued, a hearing was held by telephone conference call on August 24, 2010. The claimant participated on his own behalf. The employer participated by General Manager Blake Radel and Claims Administrator Sarah Fielder.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Dallas Kyle was employed by Team Staffing from October 7, 2009 until May 28, 2010. His last assignment began May 25, 2010, at Winegard as a forklift and crane operator. He had difficulty doing the job of crane operator because he has a prosthetic leg and climbing created problems for him, especially sores on his leg.

Mr. Kyle was no-call/no-show to work on May 28, 2010, and the client company notified Team Staffing. A call from General Manager Blake Radel between 6:00 a.m. and 7:00 a.m. went unanswered. The claimant maintained he was unable to get out of bed to answer the phone because he could not put his prosthesis on and had not brought his crutches or cell phone into the bedroom the night before even though he knew he was starting to have problems with his leg. He finally returned a call from another Team Staffing employee, Joselyn. He said he was not able to go into work because of the problem with his leg, and would not be able to continue with the assignment. He asked Joselyn to let him know "if anything else came along" and she said she would.

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.

The claimant did quit the assignment because he was not physically able to do the job of crane operator due to complications with his prosthetic leg. Although he was no-call/no-show to work for one day, that does not constitute a voluntary quit. He did say he would not return and asked the employer to let him know when anything else became available. The employer did not provide any testimony from Joselyn to confirm or deny Mr. Kyle had asked for another assignment.

If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's assertion he did ask for another assignment. Disqualification may not be imposed.

DECISION:

The representative's decision of June 25, 2010, reference 04, is affirmed. Dallas Kyle is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw