

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SONYA M TAYLOR
Claimant

APPEAL NO. 08A-UI-08748-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LABOR GUYS STAFFING
Employer

OC: 08/17/08 R: 03
Claimant: Respondent (1)

Iowa Code Section 96.5(1)(j) – Separation From Temporary Employment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 22, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on October 15, 2008. Claimant Sonya Taylor participated and presented additional testimony from Dana Taylor. Marcela Mateo, Human Resources Specialist, represented the employer.

ISSUE:

Whether Sonya Taylor separated from her employment with Labor Guys Staffing for a reason that would disqualify her for unemployment insurance benefits.

Whether the employer is liable for benefits paid to the claimant.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Sonya Taylor was employed by Labor Guys Staffing as a part-time day laborer from June 21, 2008 until July 29, 2008. The employer hired Ms. Taylor to assist with flood-related clean up on the University of Iowa campus. Ms. Taylor was expected to report for work each day for a worker selection process. The employer established two meeting points where employees would appear for the day labor selection process. One meeting point was near the Main Library. The second meeting point was near Hancher Auditorium. As part of the daily work selection process, Ms. Taylor would wait in line with other day laborers. The employer's supervisors would then select the laborers they wanted as part of their work crew for that day. Those laborers who were not selected to work that day were expected to leave for the day, but return daily for the same worker selection process. The employer expected workers to appear seven days a week. If a worker failed to appear for the work selection process for three days in a row, the employer deemed this a voluntary quit. Ms. Taylor was selected to work on June 21-23, July 1, July 5-10, July 19-20, July 27-29. Ms. Taylor appeared for work on several other days, but was not selected to work and was sent home. Ms. Taylor appeared for the worker selection process on July 24-26, but was sent home. On Ms. Taylor's last day of performing work for the employer, she told the employer she would not be returning because she no longer wished to appear without being selected to work.

The supervisors that oversaw the employer's work at the University of Iowa campus are still with the employer, but did not testify. Instead, Human Resources Specialist Marcela Mateo provided testimony from the employer. Ms. Mateo was not present at the University of Iowa job site during Ms. Taylor's employment.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge notes that the employer did not present testimony from anyone with firsthand knowledge of Ms. Taylor's employment. When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The weight of the evidence in the record indicates that Ms. Taylor was employed by the employer on a temporary basis for assignment to day labor spot jobs or casual labor. The evidence indicates that on each day Ms. Taylor was selected to work, she fulfilled the daily work assignment. Ms. Taylor's decision not to report for day labor assignments after July 29, 2008 would not disqualify her for unemployment insurance benefits. Ms. Taylor's separation from the employment was for good cause attributable to the employer. The employer's account may be charged for benefits paid to Ms. Taylor.

DECISION:

The Agency representative's September 22, 2008, 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 she 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

jet/kjw