

CONCURRING OPINION OF MARY ANN SPICER:

I agree with my fellow board members that the administrative law judge's decision should be affirmed; however, I would comment that the employer testified there was no policy informing Mr. Shipley of the need to contact the temporary employment agency within an 'x' number of days at an assignment's end. (Tr. 20, lines 9-16). The claimant corroborated this testimony when he indicated that he did not sign or receive a separate document stating that he must report to the employer when an assignment ended (Tr. 11, lines 21-28), which I find to be an Iowa Code section 96.5(1)"j" violation.

Iowa Code section 96.5(1)"j" provides:

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.

(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.

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.

(Emphasis added.)

The most pressing point for this board member was that the evidence did support that the claimant was able and available for work. Had the employer supplied substantial evidence to show that they did, in fact, satisfy the 'j' requirement, perhaps the weight of evidence would have shifted in the employer's favor. As such, I would affirm the administrative law judge's decision by allowing benefits.

Mary Ann Spicer

AMG/ss