

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DERRIS PETERSON
Claimant

APPEAL NO: 11A-UI-06345-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AVENTURE STAFFING & PROFESSIONAL
Employer

OC: 04/03/11
Claimant: Respondent (1)

Iowa Code § 96.5-1-j - Voluntary Quit of Temporary Employment

STATEMENT OF THE CASE:

Aventure Staffing & professional Services, LLC (employer) appealed an unemployment insurance decision dated May 5, 2011, reference 03, which held that Derris Peterson (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 7, 2011. The claimant participated in the hearing. The employer participated through Cyd Hall, Office Manager. Employer's Exhibit One was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant is disqualified for failure to contact the temporary employment agency within three working days after the completion of his assignment, when and if notified of this requirement at the time of hire.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a temporary laborer on September 8, 2010. On August 24, 2010 the claimant signed an availability statement which advised him of the requirement to check in for additional work after the completion of an assignment. The employer requires employees to check in within three working days after an assignment ends to provide the employer notification of the claimant's availability and failure to do so would be considered as a voluntary quit. The claimant was given a copy of the availability statement, which is not part of the application or contract of employment. The employer updated its records and the claimant signed another availability statement on February 23, 2011. The claimant denied remembering that he had to check in with the employer within three days after the completion of an assignment even though he signed the document twice. He stated, "Well, I didn't remember. I'm a 20-year-old kid, I don't remember everything I sign."

The claimant's last assignment began on February 28, 2011 and ended early on March 2, 2011 because of a comment the claimant made to a co-worker. The employer has no record of the

claimant asking for additional work but he claimed that he asked the employer representative at the time his assignment ended, what he needed to do and the employer representative stated that he would be called for additional work. The employer witness is unable to dispute that testimony.

The employer called the claimant on March 7, 2011 and left a message about a potential job interview but he never returned the call. He denied receiving any messages. The claimant went to the employer's office on March 11, 2011 to retrieve his final paycheck but did not ask for an additional assignment. He testified that, "I was busy that day. I just went in to get my check and she didn't say anything about work, and, she said she was going to call me so I was waiting for a call." The only other time the claimant contacted the employer to inquire about additional work was right before the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer or if the employer discharged him for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a. The employer herein is a temporary employment agency and temporary employment agencies are governed by Iowa Code § 96.5-1-j, which places specific restrictions on both the employer and the employee with regard to qualification for unemployment insurance benefits after a voluntary separation.

Iowa Code § 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 greater weight of the evidence indicates that the employer's end-of-assignment notification policy may not satisfy the requirements of Iowa Code § 96.5(1)(j). The statute requires the notification requirement be provided in a clear and concise explanation separation from the employment contract. While the employer's document may be separate from the employment contract, it is not clear and concise as it contains a full page of unrelated instructions regarding workers' compensation claims and the use of a personal vehicle. The administrative law judge had to request the employer witness point out the notification provision.

More importantly though, the claimant contends he asked the employer representative what he needed to do when he was told his assignment was over and was told he would be called and the employer cannot refute this testimony. Consequently, the claimant's separation from employment was with good cause attributable to the employer. Benefits are allowed.

DECISION:

The unemployment insurance decision dated May 5, 2011, reference 03, is affirmed. The claimant voluntarily quit his employment with good cause attributable to the employer and is qualified to receive unemployment insurance benefits provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css