

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEVENA, TOMMY, G
Claimant

APPEAL NO. 13A-UI-02518-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LABOR READY MIDWEST INC
Employer

OC: 01/20/13
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Labor Ready Midwest, Inc., filed a timely appeal from the February 21, 2013, reference 01, decision that allowed benefits in connection with the purported January 19, 2013 separation and that held the employer's account could be charged. After due notice was issued, a hearing was held on March 28, 2013. Claimant Tommy Devena participated. Pat Maxwell, Customer Service Representative, represented the employer. Exhibits One, Two, and Three were received into the record.

ISSUE:

Whether the claimant's January 2013 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: Labor Ready Midwest, Inc., is a temporary employment agency that offers only day labor assignments. Claimant Tommy Devena most recently performed work for the employer on January 15, 2013 in a day labor assignment at Warren Distribution. Mr. Devena completed the assignment. Each day Mr. Devena performed work in an assignment, he would have to stop at the Labor Ready office in the morning to collect a work ticket to take with him to the assignment. Each day Mr. Devena performed work for Labor Ready, Mr. Devena would have to return to Labor Ready at the end of the work day to provide Labor Ready with the work ticket upon which the client business would indicate Mr. Devena's work hours for the day and whether the client wanted Mr. Devena to return the next day. On January 15, 2013, Mr. Devena returned to Labor Ready at the end of the day with a work ticket that indicated he was to return to Warren Distribution the next day.

On the morning of January 16, 2013, Mr. Devena appeared at Labor Ready and collected his work ticket. Within a few minutes, a Labor Ready representative told Mr. Devena that he was not to return to Warren Distribution and showed him a letter from Warren Distribution indicating

as much. Mr. Devena indicated that he was going home and asked the Labor Ready representative to call him if Labor Ready had any other work for him.

On January 18, 2013, Mr. Devena telephoned Labor Ready and spoke to a representative. The employer had previously accepted telephone calls from Mr. Devena as appropriate contact from him when he was looking for work assignments. At other times, Mr. Devena would appear at labor ready in the morning and sign their sign in sheet. On January 18, Mr. Devena identified himself, asked if Labor Ready had any work for him, and was told they did not. Mr. Devena did not have any contact with Labor Ready after that.

The employer did not keep any record of its contact with Mr. Devena.

In January 2012, Labor Ready had Mr. Devena sign a document titled Iowa Addendum, ACKNOWLEDGMENT FORM STATE OF IOWA UNEMPLOYMENT LAW. The document further stated as follows:

I understand that in order to be eligible for unemployment benefits in the state of Iowa, I must comply with certain laws. As a temporary employee of Labor Ready I must notify Labor Ready of completion of an employment assignment and seek a reassignment with Labor Ready.

Failure to notify Labor Ready of the completion of employment assignment within three working days of each employment assignment under a contract of fire, shall be deemed a voluntary quit, and may be grounds for denial of unemployment benefits. I may be able to show good cause for not contacting Labor Ready within the three working days, but then must contact Labor Ready for reassignment at my first reasonable opportunity after the good cause.

The document then sets forth part of Iowa Code section 96.5(1)(j). The document closes with an acknowledgment statement:

By signing below, I acknowledge receiving this form and the above statement of Iowa's unemployment laws, and further acknowledge that I have read and understand these laws have had the opportunity to request a copy of this form.

Mr. Devena understood that the form he signed obligated him to contact Labor Ready within three days of the end of an assignment to request a new assignment. Mr. Devena received a copy of the policy.

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.

Interestingly, the employer omitted the following text from Iowa Code section 96.5(1)(j) from its statement of the law:

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*.

[Emphasis added.] The employer's statement of the end of assignment notification requirement is anything but concise, is less than clear, and does not satisfy the statutory. One can start with the heading of the document: "Iowa Addendum, ACKNOWLEDGMENT FORM STATE OF IOWA UNEMPLOYMENT LAW." There is nothing about that heading that would put a day laborer/temporary employee on notice that this was an important document the worker should read carefully and closely heed to avoid being disqualified for unemployment insurance benefits by failing to notify the employer within three working days of the end of an assignment. While the first two paragraphs of the form contain a statement of the law, the wording is less than clear. Half of the text on the form is a portion of the law as it appears in the statute. There is nothing in the statute that calls for doubling the size of the notice document by setting forth selective portions of the black letter law. In fact, inclusion of the statutory text is contrary to the statutory requirement of a *clear and concise* statement of the end of assignment notification requirement. The employer's end of assignment notification policy, as it appears on the employer's form, is a full page of small font boilerplate text that one might easily gloss over in the course of signing multiple documents at the start of an employment. The administrative law judge concludes that the employer's form does not comply with the requirements of the statute and cannot serve as a basis for disqualifying the claimant for unemployment insurance benefits. That being the case, when the claimant completed his day labor assignment on January 15, 2013, he completed his contract of hire and was under no obligation to seek further employment with Labor Ready.

The employer failed to present any testimony from the Labor Ready representative with whom Mr. Devena was in contact on January 16, 2013. The employer had the ability to present such testimony. The employer failed to present sufficient evidence to rebut Mr. Devena's testimony that he inquired about further employment before he departed on January 16. The employer failed to present sufficient evidence to rebut Mr. Devena's testimony that he made a further telephone inquiry about work on January 18. The employer presented sign in sheets for January 16, 17, and 18. The employer submitted three sign in sheets for January 16, three sign in sheet for January 17, and one sign in sheet for January 18. Interestingly, the January 16 sign in sheets do not contain a signature from Mr. Devena, though the uncontroverted evidence is that he was at the workplace on that morning. That fact lends credibility to Mr. Devena's testimony that it was not always necessary to appear and sign in to indicate availability for work. The law contains no such requirement to fulfill the contact requirements set out in Iowa Code section 96.5(1)(j). Thus, even if the administrative law judge were to conclude that the employer's policy statement complied with the statute, the weight of the evidence indicates that Mr. Devena was in contact with the employer within three working days of the end of his most recent assignment to indicate his availability for a new assignment.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that January 16, 2013 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The claimant is eligible for benefits provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

DECISION:

The Agency representative's February 21, 2013, reference 01, decision is affirmed. The claimant separation occurred on January 16, 2013, not January 19, 2013. The claimant's January 16, 2013 separation from the temporary employment agency was for good cause

attributable to the temporary employment agency. The claimant is eligible for benefits provided he 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

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