

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL G HOJATI
Claimant

AEROTEK INC
Employer

APPEAL 21A-UI-14240-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/26/20
Claimant: Appellant (2)

Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 16, 2021, (reference 01) unemployment insurance decision that denied benefits based upon his voluntary quit for failing to timely request another job assignment. The parties were properly notified of the hearing. A telephone hearing was held on August 18, 2021. The claimant Michael Hojati participated and testified. The employer Aerotek Inc. did not participate. Also present, but not participating was Administrative Law Judge Nicole Merrill.

ISSUE:

Did the claimant quit by not reporting for additional work assignments within three business days of the end of the last assignment?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed last assigned at Wells Fargo as an escalated complaint manager, from September 16, 2020 through March 5, 2021, when he was separated from the assignment, but not the employment.

Ellen Oxenford, the employer's assignment representative notified the claimant on or about February 19, 2021 that the assignment would end on March 5, 2021 and not April 26, 2021 as originally thought. Ms Oxenford further advised the claimant that there were no additional assignments available at that time, that there might be a new assignment (also with Wells Fargo), but the employer was awaiting confirmation and to stand by. On or about February 26, 2021, claimant and Ms. Oxenford, talked again about assignments. Claimant was again advised there were no current assignments, they were still awaiting confirmation on the previously mentioned possible assignment, and to stand by that the employer would notify claimant.

Claimant testified that when he began employment with Aerotek, Inc.,: they e-mailed him a copy of the company handbook; he only signed and returned tax forms; and was not handed a policy on assignment or notification practices and complainant Claimant testified his understanding,

based on conversations with the employer, was the employer would do their best to find him assignments and then let him know if one was available. Claimant was ready and able to work if an assignment was available.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation was with good cause attributable to the employer.

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. (1) 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.

(2) 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.

(3) For the purposes of this lettered paragraph:

(a) "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.

(b) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

Iowa Admin. Code r. 871-24.26(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 § 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 § 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.

Since employer provided no evidence that it presented claimant with a written copy of the reporting policy, claimant's recollection that he did not receive notice of the reporting policy is credible. As the employer did not provide instruction about what to do at the end of the assignment according to Iowa Code § 96.5(1)j, the separation is not disqualifying.

Even if the employer had established a policy that is in compliance with Iowa Code § 96.5(1)j,, the employer stated there were no current assignments, they may have one but are awaiting confirmation and would look for other work assignments for claimant establishes there was no further work available at the time. The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for and seeking work at the end of the temporary assignment. Accordingly, claimant was reasonable to opt to look for work elsewhere or to report for additional work when he did. Since claimant contacted the employer within three working days of the notification of the end of the assignment, requested reassignment, and there was no work available, no disqualification is imposed.

DECISION:

The June 16, 2021, (reference 01) unemployment insurance decision is REVERSED. The claimant's separation from employment was attributable to the employer. Benefits are allowed, provided that he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Darrin T. Hamilton
Administrative Law Judge

August 23, 2021
Decision Dated and Mailed

DH/scn