

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY S CONRAD
Claimant

APPEAL NO. 10A-UI-12114-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

OC: 08/02/09
Claimant: Appellant (2-R)

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

STATEMENT OF THE CASE:

Amy Conrad filed a timely appeal from the August 19, 2010, reference 04, decision that denied benefits based on an Agency conclusion that she had voluntarily quit on July 20, 2010. After due notice was issued, a hearing was held on October 15, 2010. Ms. Conrad participated. Sarah Fiedler represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 10A-UI-12115-JTT, concerning the claim year that began August 1, 2010.

ISSUE:

Whether the claimant's separation from the temporary employment agency was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency. Amy Conrad began getting work through Team Staffing Solutions in November 2009 and worked in a single full-time, temporary assignment until July 14, 2010, when the client business ended the assignment because it was relocating a portion of its business. Ms. Conrad learned a couple days before the assignment ended that it might be coming to an end. On July 14, 2010, Team Staffing Solutions Account Manager Tiffany TeBockhorst notified Ms. Conrad and left a voice mail message for Ms. Conrad, notifying her that the assignment had ended and that she need not report to the assignment the following day. On the morning of July 15, 2010, Ms. Conrad telephoned Team Staffing Solutions and spoke to Ms. TeBockhorst. Ms. TeBockhorst told Ms. Conrad that the same client might want Ms. Conrad to return and work in a different area. Ms. Conrad told Ms. TeBockhorst that her telephone was about to be turned off because she lacked money to pay for it. Ms. Conrad told Ms. TeBockhorst that she would later provide the employer with a new contact telephone number. Ms. TeBockhorst told Ms. Conrad that she would mail information to Ms. Conrad regarding whether the same client wished to have Ms. Conrad return in a new assignment.

About a week later, Ms. Conrad telephoned the employer and left a voice mail in a general voice mail box. The voice mail message included Ms. Conrad's new contact telephone number.

Ms. Conrad requested a return telephone call. Ms. Conrad had not heard anything further from the employer about whether she would be returned to the former client in a new assignment.

The employer has a written end-of-assignment notification policy that is set forth as a separate stand-alone policy. The policy notified Ms. Conrad of her obligation to contact the employer within three working days of the end of an assignment to seek a new assignment. Ms. Conrad signed the policy and 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.

The evidence establishes that Ms. Conrad completed an assignment on July 14, 2010 and was in contact with the temporary employment agency the next morning to discuss the possibility of a new work assignment. The employer agreed to pursue a new assignment on Ms. Conrad's behalf, but the new assignment did not materialize. The employer has an end-of-assignment notification policy that complies with the requirements of Iowa Code section 96.5(1)(j). The employer complied with the statute by providing a copy of the policy to Ms. Conrad. The statute does not require that a temporary employee sign in on an availability sheet. The statute merely required that the employee make contact to indicate their availability for a new work assignment. By contacting the employer on July 15, 2010, Ms. Conrad satisfied the requirement set forth in Iowa Code section 96.5(1)(j). The administrative law judge notes that Ms. Conrad was the only witness whose testimony was based on personal knowledge. The employer had the ability to present testimony through Ms. TeBockhorst, but elected not to present such testimony. 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 administrative law judge has concluded that Ms. Conrad's testimony is credible.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Conrad's July 2010 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The separation occurred on July 14, 2010, not July 20, 2010 as the August 19, 2010, reference 04 decision indicated. Ms. Conrad is eligible for benefits provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Conrad.

There is sufficient evidence in the record to raise the question of whether Ms. Conrad has been both able to work and available for work since she established the additional claim for benefits that was effective July 11 2010, the Sunday of the week in which she applied to restart benefits. This matter will be remanded to the claims division for determination of those issues.

DECISION:

The Agency representative's August 19, 2010, reference 04 decision is reversed. The claimant's July 14, 2010 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.

This matter is remanded to the Claims Division for investigation into and determination of whether the claimant was able to work and available for work since she established the additional claim for benefits that was effective July 11, 2010.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs