

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELVIN D SANDOVAL
Claimant

APPEAL NO. 12A-UI-13305-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ANNA ENTERPRISES STAFFING
SOLUTIONS**
Employer

OC: 10/14/12
Claimant: Respondent (2-R)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from an unemployment insurance decision dated November 6, 2012, reference 01, that allowed benefits provided the claimant was otherwise eligible and that held the employer's account could be charged. A telephone hearing was scheduled for December 6, 2012. Bill Van Sloun, Manager, represented the employer and presented additional testimony through Michella Rivers, Account Coordinator. Claimant Melvin Sandoval provided a telephone number for the hearing, but was not available at that number at the time of the hearing. Spanish-English interpreter Steven Rhodes was available to assist with the hearing. With the assistance of the interpreter, the administrative law judge made two attempts to reach Mr. Sandoval for the hearing. On each attempt, the administrative law judge's call was immediately forwarded to an answering machine, where the administrative law judge left an appropriate message in English and Spanish. Exhibits Two and Three were received into evidence.

ISSUE:

Whether Mr. Sandoval's October 2012 separation from the employment 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: Anna Enterprises Staffing Solutions is a temporary employment agency. Melvin Sandoval performed work for the employer in a single, full-time, temporary work assignment at Quality Manufacturing in Urbandale. Mr. Sandoval began the assignment in February 2012 and completed the assignment on October 15, 2012. On October 16, 2012, Michella Rivers, Account Coordinator, notified Mr. Sandoval by telephone that the assignment had ended. The two conversed in English. On October 18, 2012, Mr. Sandoval telephoned Anna Enterprises and spoke with Ms. Rivers. Mr. Sandoval requested that the employer provide him with a letter so that he could receive unemployment insurance benefits. Ms. Rivers told Mr. Sandoval that was not how it worked and that the employer had other work available for Mr. Sandoval. Mr. Sandoval told

Ms. Rivers that he was not interested in obtaining further work through Anna Enterprises. Mr. Sandoval did not make further contact with the employer.

At the start of the employment, the employer had Mr. Sandoval sign a policy that obligated him to contact the employer within three days of completing an assignment to request a new a new assignment. The policy was set forth on a separate document. The policy statement contained a clear and concise statement of Mr. Sandoval's obligation to contact the employer at the end of an assignment and the unemployment insurance consequences of failing to do that. Mr. Sandoval received a copy of the policy document.

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 employer's end of assignment notification policy complied with the requirements of Iowa code section 96.5(1)(j). Mr. Sandoval received a copy of the policy. Though Mr. Sandoval was in contact with the employer within three working days of the end of an assignment, he did not contact the employer to request a new assignment. Instead, he contacted the employer solely for the purpose of getting a document that would support an application for unemployment insurance benefits. When the employer indicated there was other work available, Mr. Sandoval specifically stated he was not interested in further work with the employer.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Sandoval's separation from the temporary employment agency was without good cause attributable to the temporary employment agency. Effective October 15, 2012, Mr. Sandoval is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. Mr. Sandoval would have to meet all other eligibility requirements. The employer's account will not be charged for benefits based on wages paid up to the time of the separation.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of the amount of the overpayment and whether the claimant will have to repay the overpaid benefits.

DECISION:

The Agency representative's November 6, 2012, reference 01, decision is reversed. The claimant's October 15, 2012 separation from the temporary employment agency was without good cause attributable to the temporary employment agency. Effective October 15, 2012, the claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant would have to meet all other eligibility requirements. The employer's account will not be charged for benefits based on wages paid up to the time of the separation.

This matter is remanded to the Claims Division for determination of the amount of the overpayment and whether the claimant will have to repay the overpaid benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs