

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

**DARIN D DOPP**

Claimant

**APPEAL 22A-UI-13908-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SEDONA STAFFING INC**

Employer

**OC: 05/15/22**

**Claimant: Respondent (1)**

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

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation in Fact-Finding

**STATEMENT OF THE CASE:**

On June 13, 2022, employer Sedona Staffing, Inc., filed an appeal from the June 8, 2022 (reference 01) unemployment insurance decision that allowed benefits after a separation from employment on March 17, 2022. The parties were properly notified of the hearing. A telephonic hearing was held at 10:00 a.m. on Tuesday, July 26, 2022. Claimant Darin D. Dopp participated. Employer Sedona Staffing, Inc., participated through Edith Rubalcava, Risk Management Administrator. Employer's Exhibit 1 was received and admitted into the record. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Did the claimant quit the temporary assignment 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: Claimant began working for temporary staffing firm Sedona Staffing, Inc., in 2019. When he was hired, claimant signed a copy of the employer's "Availability Statement," stating he understood that he must check in with the employer within three days of a temporary assignment ending or he will be considered to have voluntarily quit. (Exhibit 1)

Claimant's last temporary assignment was at FarmTech in Dyersville. Claimant began this assignment on September 30, 2020. He worked full-time hours as a painter at FarmTech until early March 2022, when he sustained a work-related injury. The employer put him on a light-duty assignment at the Delaware County Fairgrounds on March 14, where he worked until March 17.

On March 17, claimant saw the doctor and was released to return to full-duty work. Later that day, he received a call from Chris Nelson, who worked in the employer's Dubuque office. She notified claimant that he had been released to return to full duty, so his light-duty assignment

was complete. Claimant asked if he would be returning to FarmTech, and she said she would check and would let him know. Nelson never contacted claimant again.

The following Monday, March 21, claimant contacted the employer's Manchester office and spoke to Sierra. He asked if he would be returning to FarmTech, and she said she would look into it. Later, she informed the claimant that FarmTech did not have work available for him. Claimant continued to check in with the employer nearly every day until Sierra told him to stop calling the office because the employer had no work available. She let him know she would contact him when she had work for him.

The administrative record reflects that claimant has received no unemployment benefits and filed no weekly continued claims since filing a claim with an effective date of May 15, 2022. Rubalcava participated in a fact-finding interview on June 7, 2022.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant separated from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

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 paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce

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(15) provides:

Employee of temporary employment firm.

a. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm within three days of completion of an employment assignment and seeks reassignment under the contract of hire. The employee must be advised by the employer of the notification requirement in writing and receive a copy.

b. The individual shall be eligible for benefits under this subrule if the individual has good cause for not contacting the employer within three days and did notify the employer at the first reasonable opportunity.

c. Good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business; blinding snow storm; telephone lines down; employer closed for vacation; hospitalization of the claimant; and other substantial reasons.

d. Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer, or any other currently acceptable means of communications. Working days means the normal days in which the employer is open for business.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976). Here, the employer did not present any witness who actually communicated with the claimant. Additionally, the employer did not present the notes from any witness who communicated with the claimant. Instead, the employer relied on a member of its risk management team to provide secondhand testimony summarizing the actions

of others. While the employer is free to make this choice, it may ultimately lose a credibility battle against a claimant presenting a firsthand account of events. This is one such case. After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds claimant presented the more credible version of events. The claimant recalled the people he spoke to and the substance of those conversations. His testimony was believable.

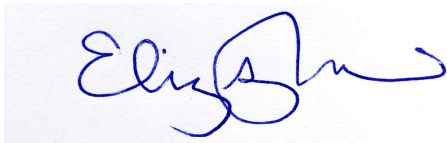
The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for and seeking work at the end of the temporary assignment. Here, the claimant was initially communicating with the employer to determine whether the assignment in question was available: he knew he was no longer eligible for the light-duty position, but he needed information from the employer to determine whether his former position was still available. Once claimant learned from Sierra that the position at FarmTech was no longer available, he continued to stay in contact with the employer and seek assignments until he was told the employer would contact him if work became available. The credible testimony in the record establishes that claimant contacted the employer within three working days of learning his assignment had ended. He inquired about a new work assignment and there was no work available for him at that time. Therefore, benefits are allowed, provided he is otherwise eligible.

Because claimant's separation is not disqualifying, the issues of overpayment and chargeability are moot.

**DECISION:**

The June 8, 2022 (reference 01) unemployment insurance decision is affirmed. Claimant notified his employer within three days of learning that his assignment had ended that he needed a new assignment. Benefits are allowed, provided he is otherwise eligible.

The issues of overpayment and chargeability are moot.



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Elizabeth A. Johnson  
Administrative Law Judge

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September 16, 2022  
Decision Dated and Mailed

lj/lj

**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: [eab.iowa.gov](http://eab.iowa.gov)**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.