

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MOOTAZ A SIRAGELNUR**  
Claimant

**APPEAL 23A-UI-09526-AR-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REMEDY TEMPORARY SERVICES INC**  
Employer

**OC: 10/30/22  
Claimant: Respondent (5R)**

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Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment  
Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871—24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

On October 6, 2023, the employer filed an appeal from the September 27, 2023, (reference 17) unemployment insurance decision that allowed benefits based on the determination that the claimant was discharged from employment without a showing of disqualifying misconduct. The parties were properly notified about the hearing. A telephone hearing was held on October 24, 2023. Claimant, Mootaz A. Siragelnur, did not participate. Employer, Remedy Temporary Services Inc., participated through Branch Manager Aurea Nigaglioni and Equifax representative Hannah Mitchell. Employer's Exhibits 1 through 3 were admitted. The administrative law judge took official notice of the administrative record.

**ISSUES:**

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?  
Was the claimant discharged for disqualifying job-related misconduct?  
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on August 21, 2023. Claimant last worked as a full-time forklift operator for one of the employer's clients. Claimant was separated from employment on August 24, 2023, when the assignment ended.

The client where claimant was placed in August 2023 allows forklift operators to start employment with no experience. New forklift operators are placed in a two-week trial period. If, during that two-week period, the client determines the employee is not suited to forklift operation, the client moves the employee to production.

Between August 21 and 24, 2023, claimant had a number of accidents with the forklift. On August 24, 2023, claimant ran the forklift into a concrete wall. The client determined that claimant was inappropriate for forklift operation and informed the employer that his assignment as a forklift operator would end and he could be moved to production. Claimant had not received any disciplinary warnings related to his time with the client.

Also on August 24, 2023, Nigaglioni spoke with claimant to inform him of the client's decision. She offered claimant two potential shifts for the move to production and informed him that the move to production would result in a \$.50-per-hour pay decrease. Claimant refused to move to production and expressed interest only in forklift operation positions through the employer. The employer had no forklift operation positions at the time. Nigaglioni told claimant to watch the employer's website for positions of interest. The employer has not had contact with claimant since August 24, 2023.

The employer maintains a policy that requires that employees contact the employer within two days of the end of an assignment in order to avoid interruption of unemployment insurance benefits. This policy appears as part of the employer's Conditional Offer of Employment document, which contains all of its general employment policies. Claimant received a copy of that document at the time of hire.

The administrative record indicates that claimant filed a claim for unemployment insurance benefits with an effective date of October 30, 2022, and an additional date of August 20, 2023. Since this separation, claimant has neither filed for nor received unemployment insurance benefits. The employer did not participate in the fact-finding interview, but due to no fault of its own. It received the notice of the fact finding late on Friday, September 15, 2023, for the interview scheduled for Monday, September 18, 2023. It did not have time to secure a witness with first-hand information.

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

For the reasons that follow, the administrative law judge concludes:

As a preliminary matter, the administrative law judge concludes that claimant was not discharged from employment, since he was offered continued employment through this employer. The end of the temporary assignment does not constitute a discharge under these facts.

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. (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(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.

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.

The purpose of the statute is provide notice to the temporary agency employer that the claimant is available for and seeking work at the end of a temporary assignment. Claimant and the employer had contact on the day the assignment ended, which is within three days. At the time, the employer did not have work that met claimant's requirements. Whether claimant refused a suitable offer of work and whether claimant is able to and available for work have not been determined by Iowa Workforce Development. That issue will be remanded. Claimant fulfilled the requirement that he contact the employer within three days of the end of the assignment. The separation is not disqualifying.

Because the separation is not disqualifying, the issues of overpayment, repayment, and participation are moot.

**DECISION:**

The September 27, 2023, (reference 17) unemployment insurance decision is MODIFIED WITH NO CHANGE IN EFFECT. Claimant quit the employment with good cause attributable to the employer through a qualifying separation from temporary employment. Benefits are allowed, provided the claimant is otherwise eligible. The issues of overpayment, repayment, and participation are moot.

**REMAND:**

The issues of whether claimant refused suitable employment and whether claimant is able to and available for work are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.



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Alexis D. Rowe  
Administrative Law Judge

October 26, 2023  
Decision Dated and Mailed

ar/scn

**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:

**Iowa Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: 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:

**Iowa Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
En línea: 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 adquiriera 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.