

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

PATRICIA J COPPAGE

Claimant

TEAM STAFFING SOLUTIONS INC

Employer

APPEAL NO. 15A-UI-09692-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/02/14

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated August 20, 2015, reference 03, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on September 14, 2015. Claimant participated personally. Employer participated by Sarah Fiedler. Claimant's Exhibit A was admitted into evidence.

ISSUE:

Did the claimant quit by not reporting for an additional work assignment 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 at Winegard from January 19, 2015, and was separated from the assignment, but not the employment, on July 27, 2015. At that time the assignment representative notified the claimant that the assignment had ended. Claimant did request placement in a new assignment pursuant to the employer's notification requirement but no further assignments were available at the time. Employer terminated claimant on July 29, 2015 for not being in contact under the three-day notification requirement.

Claimant presented evidence that she followed company policy on July 27, 2015 by calling in sick to both employer and Winegard. Additionally claimant provided testimony and evidence off her cell phone that she spoke with a representative of employer on July 27, 2015 and expressed interest in another assignment. The person to whom claimant said she spoke told claimant that employer would call her when a new job assignment opened up. Employer did not have this person testify.

Employer provided testimonial evidence stating that they had faxed in the company's three-day policy for requesting new job assignments that was signed by claimant. The administrative law

judge did not receive this document, but employer stated that they had a confirmation of receipt of the fax.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation was 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. 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.

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.

The administrative law judge received direct testimony from the claimant showing that she called in to both employer and to her assignment on July 27, 2015. She then testified that employer called her back to alert her job had ended and that employer would contact her if another job assignment came available. Employer did not have the person who communicated between employer and Winegard testify at this hearing. 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).

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. 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, benefits are allowed, provided she is otherwise eligible.

DECISION:

The August 20, 2015, (reference 03) decision is reversed. The employer had adequate knowledge about the conclusion of the claimant's assignment and the request for more work but had no further work available at the time as they did not call claimant when claimant had requested additional work. Benefits are allowed, provided the claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

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