

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**HARLEY MORSE**  
Claimant

**DES STAFFING SERVICES INC**  
Employer

**APPEAL 21A-UI-08354-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/27/20**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer, Des Staffing Services, filed an appeal from the March 22, 2021, (reference 01) unemployment insurance decision that granted benefits based upon the conclusion the claimant was terminated for a non-disqualifying reason. The parties were properly notified of the hearing. A telephone hearing was held on June 7, 2021. The claimant participated. Serena Konrady provided testimony in support of the claimant. The employer participated through Human Resources Manager Jamie Scott.

**ISSUES:**

1. Did the claimant quit by not reporting for additional work assignments within three business days of the end of the last assignment?
2. Is the claimant overpaid regular unemployment insurance benefits? Is the claimant excused from repaying those benefits received due to the employer's nonparticipation?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant was employed temp-to-hire part-time as a clerical office position and was last assigned at Des Staffing Services from April 29, 2020, until she was separated from the assignment, but not the employment, on July 24, 2020.

On December 9, 2020, the claimant asked Operations Manager Emily if she still had a job. She stated her reason for asking the question was because she saw she only received \$81.00 in the last week.

On December 16, 2020, Ms. Wild informed the claimant that her assignment at Des Staffing was ending due to two infractions. Ms. Wild notified the claimant that the assignment had ended and also advised the claimant that there were no additional assignments available. The claimant did request placement in a new assignment within three working days of the assignment end pursuant to the employer's notification requirement but no further assignments were available at the time. That evening, Ms. Wild and the claimant exchanged text messages about how it was

great working with each other. The claimant sent Ms. Wild messages stating she wanted to call her as a witness in the case because she was told she would not be placed at another assignment. The claimant read these text messages into the record.

The employer does not have a policy that complies with the specific terms of Iowa Code § 96.5(1)j. On the one hand, the employer's policy does notify employees that if they do not call within three business days of their job assignment ending that they shall be considered a voluntary quit. It also states the consequences of not seeking reassignment may be denial of unemployment. The employer provided print out which, includes this policy and other policies regarding attendance, as well as, serving as an acknowledgement of receipt of its policies. (Exhibit 1) However, the employer merely allows the option of printing off a written copy, rather than providing every employee a written copy regardless of their preference.

The following findings of fact relate to overpayment issue:

The claimant and employer were not sent a notice of fact finding. Instead, Iowa Workforce Development engaged in fact finding by conducting cold calls. Both parties participated in separate cold calls.

The claimant made a claim for benefits effective December 27, 2020. Her weekly benefit amount is \$88.00. She did not receive any unemployment benefits.

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

For the reasons that follow, the administrative law judge concludes the claimant's separation was with good cause attributable to the employer. Since the claimant's separation is with good cause attributable to the employer, the overpayment issue is moot.

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 lettered paragraph:

(a) "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.

(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 § 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 decision in this case rests, at least in part, on the credibility of the witnesses. 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.*

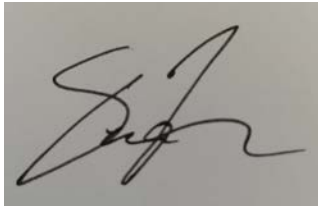
After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant's version of events to be more credible than the employer's recollection of those events. This is primarily

due to the claimant's specific recollection of the conversation with Ms. Wild and contemporaneous accounts of the circumstances surrounding her separation.

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 the 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, no disqualification is imposed.

**DECISION:**

The March 22, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant's separation from employment was attributable to the employer. Benefits are allowed, provided she is otherwise eligible. Since the claimant is entitled to benefits, the overpayment issue is moot. Any benefits claimed and withheld on this basis shall be paid.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is written over a light gray rectangular background.

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Sean M. Nelson  
Administrative Law Judge  
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Des Moines, Iowa 50319-0209  
Fax (515) 725-9067

June 21, 2021  
Decision Dated and Mailed

smn/scn