

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILIE JONES
Claimant

APPEAL NO. 07A-UI-08534-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UPTOWN STAFFING INC
Employer

OC: 07/22/07 R: 01
Claimant: Respondent (1)

Section 96.5-1-j – Temporary Employment
871 IAC 24.26(19) – Temporary Employment

STATEMENT OF THE CASE:

Uptown Staffing, Inc. (employer) appealed a representative's August 29, 2007 decision (reference 01) that concluded Willie Jones (claimant) was qualified to receive unemployment insurance benefits after a question about an offer of employment from Uptown Staffing, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 24, 2007. The claimant participated in the hearing. Kim Leggett appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was there a disqualifying separation from employment? Is the claimant disqualified due to refusing an offer of suitable work?

FINDINGS OF FACT:

The employer is a temporary staffing agency. The claimant began his first and only assignment through the employer on January 31, 2007. He worked full time as a forklift driver on the second shift in a temp-to-hire position at the employer's business client through July 19, 2007. The claimant worked about an hour on that date and then was informed by the business client to contact the employer. When the claimant then contacted the employer, Ms. Leggett, the manager, informed the claimant that the business client had determined not to hire the claimant on a permanent basis. She told him to leave the facility at that time and to contact her on the following Monday, July 23, to further discuss the matter. The reason the business client determined not to retain the claimant was dissatisfaction with a background check, but there is no allegation that the claimant concealed any information at the time he applied with the employer.

The claimant went into the employer's office to pick up his check later on July 19; he was not advised there was anything further he needed to do at that time. He attempted to call Ms. Leggett the following week as instructed, but she was not available when he called. When

he had not been able to get through to her by July 24, he took action to establish a claim for unemployment insurance benefits, which was effective that week beginning July 22, 2007. His base period high quarter average weekly wage was \$449.79, or an average of \$11.24 per hour.

On July 25, Ms. Leggett contacted the claimant and inquired about the claimant's interest in a second shift position at an Omaha, Nebraska, business client at the rate of \$10.00 per hour that would start the next day. The claimant responded that he could not commit to that assignment at that time as he had a 2:30 p.m. job interview on July 26 with another potential employer that would be at the rate of \$11.50 per hour; Ms. Leggett responded that if the claimant could not commit at that time she would then need to move on to the next person on the list. The claimant did not maintain weekly contact with the employer after that point.

REASONING AND CONCLUSIONS OF LAW:

The first question in this case is whether there was a disqualifying separation from employment.

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.

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 intent of the statute is to avoid situations where a temporary assignment has ended and the claimant is unemployed, but the employer is unaware that the claimant is not working could have been offered an available new assignment to avoid any liability for unemployment insurance benefits. Where a temporary employment assignment has ended and the employer is aware of the end of that assignment, the employer is already on "notice" that the assignment is ended and the claimant is available for a new assignment; where the claimant knows that the employer is aware of the ending of the assignment, he has good cause for not separately "notifying" the employer.

Here, the employer was aware that the business client had ended the assignment; it considered the claimant's assignment to have been completed, albeit unsuccessfully. Regardless of whether the claimant reported for a new assignment, the separation is deemed to be completion of temporary assignment and not a voluntary leaving; a refusal of an offer of a new assignment would be a separate potentially disqualifying issue. Further, the claimant was physically in the employer's office immediately after he had been informed of the ending of the assignment; if the employer expected him to take some other specific action to seek reassignment at that time, the employer could have reminded the claimant at that time. As to his failure to maintain contact after the July 25 offer, continued contact is also not a requirement of the statute. Benefits are allowed, if the claimant is otherwise eligible.

The remaining issue in this case is whether the claimant refused a suitable offer of work without good cause.

Iowa Code section 96.5-3-a provides:

An individual shall be disqualified for benefits:

3. Failure to accept work. If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual. The department shall, if possible, furnish the individual with the names of employers which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the department on forms provided by the department. However, the employers may refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual for benefits until requalified. To requalify for benefits after disqualification under this subsection, the individual shall work in and be paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

a. In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, prior training, length of unemployment, and prospects for securing local work in the individual's customary occupation, the distance of the

available work from the individual's residence, and any other factor which the department finds bears a reasonable relation to the purposes of this paragraph. Work is suitable if the work meets all the other criteria of this paragraph and if the gross weekly wages for the work equal or exceed the following percentages of the individual's average weekly wage for insured work paid to the individual during that quarter of the individual's base period in which the individual's wages were highest:

- (1) One hundred percent, if the work is offered during the first five weeks of unemployment.
- (2) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.
- (3) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.
- (4) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

871 IAC 24.24(1)a provides:

- (1) Bona fide offer of work.

- a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

In this case, there was no definite refusal of work. Even to the extent the claimant's failure to immediately commit to or affirmatively accept the job offer could be deemed a refusal, it was not for a disqualifying reason; he had a good reason for not immediately accepting the position starting the same day as his previously scheduled interview for a better job, and the position offered was below the percentage criteria established for suitable work, which for that week would have been 100 percent of his average weekly wage. 871 IAC 24.24(3); 871 IAC 24.24(15). Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's August 29, 2007 decision (reference 01) is affirmed. The claimant's separation was not a voluntary quit but was the completion of a temporary assignment. He did

not refuse an offer of work without good cause. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css