

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SHERRY L BARKER
Claimant

APPEAL NO. 20A-UI-12192-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SHORT STAFFED INC
Employer

OC: 06/14/20
Claimant: Appellant (2)

Iowa Admin. Code r. 871-24.26(19) – Fulfillment of the Contract of Hire

STATEMENT OF THE CASE:

Sherry Barker filed a timely appeal from the September 24, 2020, reference 05, decision that disqualified her for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that Ms. Barker voluntarily quit on June 14, 2020, by failing to notify the employer within three working days of completing an assignment after having been told in writing of her responsibility to notify the employer. After due notice was issued, a hearing was held on November 30, 2020. Ms. Barker participated personally and was represented by attorney Jim Duff. Jessica Hinojosa represented the employer.

ISSUE:

Whether the claimant's June 2020 separation from the temporary employment agency was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Short Staffed, Inc. is a temporary employment agency. Sherry Barker commenced getting work through Short Staffed in 2017. Ms. Barker's most recent assignment was a full-time, temporary groundskeeper work assignment at Memorial Park Cemetery. Ms. Barker completed an assignment at Memorial Park in 2019 and returned to perform work in a new assignment in spring 2020. Ms. Barker last performed work in the assignment on Friday, June 12, 2020. Shortly thereafter a Memorial Park representative notified Short Staffed that it was ending the assignment in connection with a purported argument and purported language issue. Ms. Barker had agreed to sell a vehicle to a coworker and a disagreement arose between the two workers regarding payment for the vehicle. On the morning of June 15, 2020, Short Staffed Sales Manager Jason Grieve sent Ms. Barker a text message advising her that Memorial Park has ended the assignment. Ms. Barker sent a text message response in which she asserted that she had ended the assignment. Ms. Barker had not taken any steps to end the assignment. When Mr. Grieve sent his text message to Ms. Barker, he indicated he would call her that morning. When Mr. Grieve called, Ms. Barker did not answer. Mr. Grieve did not leave a message. There was no further contact between the parties. However, about a month after Ms. Barker's separation from the assignment, Ms. Barker accessed a Sioux City marketplace

webpage on Facebook, saw Short Staffing openings for production position and expressed interest through the Facebook page.

In connection with Ms. Barker's 2019 assignment at Memorial Park Cemetery, Short Staffed had Ms. Barker "electronically sign" on July 31, 2019 to acknowledge an Assignment Completion Policy and an employee handbook. The Assignment Completion policy appeared by itself as a stand-alone policy and stated that by signing the policy, Ms. Barker was acknowledging that when "the current assignment" ended she had three days to notify Short Staff if she desired another assignment. The policy stated that if she did not make contact within three days, Short Staff would determine that she had voluntarily quit. The policy statement omitted reference to the unemployment insurance consequences of failing to contact the employer within three written days to request a new assignment. The employer did not provide Ms. Barker with a copy of the policy she electronically signed and instead provided her with electronic access to that and other materials. Ms. Barker does not recall acknowledging the policy.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)(j) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

The evidence in the record establishes a June 15, 2020 separation that was for good cause attributable to the employer. The evidence does not establish misconduct on the part of Ms. Barker in connection with her work in the assignment. See Iowa Code section 96.5(2) regarding discharge for misconduct in connection with the employment. The employer did not substantially comply with the notification requirement set forth at Iowa Code section 96.5(1)(j)(2). The Assignment Completion Policy was deficient by failing to reference the unemployment insurance consequences of failing to contact the employer within three working days of completing an assignment to request a new assignment. The policy on its face indicated that it was specific to the 2019 assignment. The employer did not provide Ms. Barker with a copy of the policy she signed. Because the employer did not substantially comply with the statutory notice requirements, subsection J of Iowa Code section 96.5(1) does not apply to Ms. Barker's employment or separation from the employment. Instead, Ms. Barker fulfilled the contract of hire on June 15, 2020 by completing all the work that the employer and the client business had for her in the temporary work assignment and was under no obligation to seek further assignments through Short Staffed. Ms. Barker is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The September 24, 2020, reference 05, decision is reversed. The claimant's separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The separation was effective June 15, 2020. The claimant is eligible for benefits provided she is otherwise eligible. The employer's account may be charged for benefits.

A rectangular box containing a handwritten signature in cursive script that reads "James E. Timberland".

James E. Timberland
Administrative Law Judge

December 7, 2020
Decision Dated and Mailed

jet/scn