

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LONNIE S SIEVING**

Claimant

**APPEAL NO. 15A-UI-09367-S1**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**1<sup>ST</sup> CLASS STAFFING LLC**

Employer

**OC: 09/07/14**

**Claimant: Appellant (2)**

Section 96.5-1-j – Separation from Temporary Employer

**STATEMENT OF THE CASE:**

Lonnie Sieving (claimant) appealed a representative's August 14, 2015 decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits due to his separation from work with 1st Class Staffing (employer). After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held on September 8, 2015, in Des Moines, Iowa. The claimant participated personally. The employer did not appear and therefore, did not participate in the hearing.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary employment service. The claimant performed services from December 29, 2014, through July 23, 2015. He signed a document in December 2014, indicating he was to contact the employer within three days following the completion of an assignment to request placement in a new assignment. The claimant was given a copy of the document. The claimant completed last assignment on July 23, 2015, and sought reassignment from the employer on July 24 and 25, 2015, by calling and leaving voice messages. The claimant asked the employer if work was available. The employer never returned the claimant's calls.

The parties were properly notified of the scheduled hearing on this appeal. The employer received the hearing notice prior to the hearing scheduled on September 8, 2015, for 1000 E. Grand Avenue, Des Moines, Iowa. The employer failed to appear for the hearing at the hearing location. The first time the employer directly contacted the Appeals Bureau was on September 8, 2015, twenty-four minutes after the scheduled start time for the hearing. The hearing had ended and the claimant had left the building.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Admin. Code r. 871-26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

The first time the employer called the Appeals Section for the September 8, 2015, hearing was after the hearing record had been closed. Although the employer intended to participate in the hearing, the employer failed to read or follow the hearing notice instructions and did not contact the Appeals Section prior to the hearing. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. Intent alone is not sufficient. An intent must be accompanied by an overt act carrying out that intent. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). In the case of an appeal hearing, that overt act is to appear for the in-person hearing. The employer did not do this and therefore has not established good cause to reopen the hearing. The employer's request to reopen the hearing is denied.

For the reasons that follow the administrative law judge concludes the claimant is eligible to receive unemployment insurance benefits.

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.

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.

Under the Iowa Code the employer must advise the claimant of the three-day notice requirement and give the claimant a copy of that requirement. The notice requirement cannot be a part of the contract for hire. The employer followed the requirements of the code. The claimant sought reassignment. Therefore, benefits are allowed provided the claimant is otherwise eligible.

**DECISION:**

The representative's August 14, 2015, decision (reference 02) is reversed. The employer's request to reopen the hearing is denied. The employer has not met its proof to establish job-related misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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