

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

THOMAS W TOUHEY
Claimant

REMEDY INTELLIGENT STAFFING INC
Employer

APPEAL 24A-UI-01835-DZ-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 01/21/24
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Remedy Intelligent Staffing Inc, the employer/appellant,¹ appealed the Iowa Workforce Development (IWD) February 9, 2024 (reference 01) unemployment insurance (UI) decision. IWD found Mr. Touhey eligible for REGULAR (state) UI benefits because IWD concluded he worked a temporary job until the job ended on September 25, 2023, and he notified the employer, a temporary employment firm, within three working days of when his job ended. On February 20, 2024, the Iowa Department of Inspections, Appeals and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to the employer and Mr. Touhey for a telephone hearing scheduled for March 7, 2024.

The administrative law judge held a telephone hearing on March 7, 2024. The employer participated in the hearing through Dawn Starr, branch manager. Mr. Touhey participated in the hearing personally. The administrative law judge took official notice of the administrative record and admitted Employer's Exhibit 1 as evidence.

ISSUES:

Did Mr. Touhey voluntarily quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Touhey began working for the employer on February 13, 2023. He was assigned to work at General Mills as a full-time material handler/field associate. Sometime in about August 2023, the employer and/or General Mills told Mr. Touhey that he would reach his maximum numbers of hours, at which point his assignment would end. Mr. Touhey asked the employer for a new assignment so he could continue to work whenever the General Mills assignment ended. Ms. Starr told Mr. Touhey that the employer did not have any assignments available at that time and the employer would let him know if/when there were assignments available.

Mr. Touhey reached his maximum number of hours and his assignment ended on Monday, September 25. On Tuesday, September 26, Ms. Starr contacted Mr. Touhey and offered him a

¹ Appellant is the person or employer who appealed.

new assignment. The new assignment was at Ryder a full-time display builder with an immediate start date and a pay rate of \$14.50 per hour. Mr. Touhey told Ms. Starr that he had a job interview with McDonald's already scheduled for that Friday, September 29, and he wanted to see if he would get that job.

Mr. Touhey did not get the McDonald's job. So, on September 29, he called Ms. Starr and asked about the Ryder job. Ms. Starr told Mr. Touhey that the job was no longer available. Mr. Touhey asked for a new assignment. Ms. Starr told Mr. Touhey that the employer did not have any assignments available at that time.

Mr. Touhey contacted the employer again the next week, on Tuesday, October 3 and Thursday, October 5, and asked for a new assignment. Each time, Ms. Starr repeated that the employer did not have any assignments available at that time.

The employer's policy provides that an employee is required to request a new assignment from the employer within three working days of the end of an assignment and if the employee does not do so the employee is deemed to have voluntarily quit. The policy is in writing and Mr. Touhey acknowledged receiving a copy of the policy on February 2, 2023.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Touhey's separation from employment on September 25, 2023 was with good cause attributable to the employer, so he is eligible for UI 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.

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.

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of each temporary assignment so they may be reassigned and continue working. The language of the statute allows benefits for a claimant who notifies the temporary employment firm of completion of an assignment and who seeks reassignment.

Iowa Admin. Code r. 871-24.26(15) 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:

Employee of temporary employment firm.

a. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm within three days of completion of an employment assignment and seeks reassignment under the contract of hire. The employee must be advised by the employer of the notification requirement in writing and receive a copy.

b. The individual shall be eligible for benefits under this subrule if the individual had good cause for not contacting the employer within three days and did notify the employer at the first reasonable opportunity.

c. Good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business; blinding snow storm; telephone lines down; employer closed for vacation; hospitalization of the claimant; and other substantial reasons.

d. Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer, or any other currently accepted means of communications. Working days means the normal days in which the employer is open for business.

In this case, Mr. Touhey and the employer knew his assignment at General Mills would end when he worked his maximum number of hours. Before and after this assignment ended, Mr. Touhey communicated with the employer about a new assignment. Mr. Touhey communicated with the employer on September 26, the day after his assignment ended, and again on September 29. Mr. Touhey's quit is with good cause attributable to the employer and he is eligible for UI benefits.

Since Mr. Touhey is eligible for REGULAR (state) UI benefits per this decision, the issues of overpayment and repayment are moot. An issue being moot means there is nothing left to decide.²

DECISION:

The February 9, 2024 (reference 01) UI decision is AFFIRMED. Mr. Touhey's separation from employment with the employer on September 25, 2023 with good cause attributable to the employer. Mr. Touhey is eligible for UI benefits, as long as no other decision denies him UI benefits.



Daniel Zeno
Administrative Law Judge

March 8, 2024
Decision Dated and Mailed

DZ/jkb

² *Iowa Bankers Ass'n v. Iowa Credit Union Dep't*, 335 N.W.2d 439, 442 (Iowa 1983).

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.