

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JEFFERY T HIGGINS**  
Claimant

**ELITE STAFFING GLOBAL INC**  
Employer

**APPEAL 16A-UI-06604-JP-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/08/16  
Claimant: Respondent (1)**

Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-Finding Interview

**STATEMENT OF THE CASE:**

The employer filed an appeal from the June 10, 2016 (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 29, 2016. Claimant did not participate. Employer participated through hearing representative Natalie Olds and branch manager Kathy Achenbach. Official notice was taken of the administrative record of claimant's benefit payment records with no objection.

**ISSUES:**

Did claimant quit by not reporting for additional work assignments within three business days of the end of the last assignment?

Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the Agency be waived?

Can charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a staffing agency. Claimant was employed as a temp-to-hire, full-time package machine operator last assigned at Ferrara Candy Company from October 20, 2015 and was separated from the assignment, but not the employment, on October 26, 2015.

On October 24, 2015, claimant walked off the assignment during his scheduled shift. Claimant came back to work on October 25, 2016 and October 26, 2016 but was walked out and separated from the assignment on October 26, 2016. Ms. Achenbach was notified by the assignment that claimant walked off the job on October 26, 2016. Ferrara Candy Company notified Ms. Achenbach that claimant's assignment was over and the reason why (claimant walked off the job on October 24, 2015).

On October 26, 2015, claimant came to the employer and the employer explained to him why his assignment had ended. Claimant did not request an additional assignment. Claimant is still considered employed today, just not on assignment. Ms. Achenbach documents any conversations she has with employees. Ms. Achenbach has not had any contact with claimant after October 26, 2016, until the fact-finding hearing. Ms. Achenbach would have documented if claimant had asked for an assignment or if he had refused an assignment.

The employer has a written policy in the employee handbook that requires employees to contact the employer once their assignment has ended and request a new assignment. The policy does not state that the employee has three working days to report their assignment ended and request a new assignment. The policy does state that an employee's unemployment benefits may be at risk if they do not contact the employer. Every employee receives the employee handbook and sign a receipt that they have receive the handbook. Claimant received the employee handbook. The policy is in the handbook and does not require employees to sign a separate piece of paper acknowledging receipt of the notification policy. The employer does not have a policy that complies with the specific terms of Iowa Code § 96.5(1)(j). There is nothing in the handbook that requires employees to contact the employer on a consistent basis to be considered employed.

The employer did participate in the fact-finding interview.

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

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

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. 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.

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.

Iowa Code § 96.5(1)(j) sets out specific requirements an employer's reporting policy must comply with. The employer's policy did not comply with the requirements in Iowa Code § 96.5(1)(j). The employer's policy does not specifically provide that an employee is to report to the employer and request an additional assignment within three working days of their assignment ending. Iowa Code § 96.5(1)(j). Furthermore, the employer's reporting policy is in the employee handbook and is not a separate document clearly explaining the notification requirement. See Iowa Code § 96.5(1)(j).

Since the employer did not provide instruction about what to do at the end of the assignment according to Iowa Code § 96.5(1)(j), the separation is not disqualifying. Benefits are allowed.

As benefits are allowed, the issues of overpayment, repayment, and the chargeability of the employer's account are moot.

**DECISION:**

The June 10, 2016 (reference 02) unemployment insurance decision is affirmed. Claimant's separation from employment was attributable to the employer. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

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