

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

ERIC T DANIELS  
1551 NEWELL ST  
WATERLOO IA 50703

L A LEASING INC  
SEDONA STAFFING  
612 VALLEY DR  
MOLINE IL 61265

Appeal Number: 05O-UI-02423-LT  
OC: 07-04-04 R: 03  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Iowa Code §96.5(2)a – Discharge/Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism  
Iowa Code §96.5(1)j – Voluntary Leaving – Temporary Employment

STATEMENT OF THE CASE:

Employer filed a timely appeal from the August 10, 2004, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held on March 28, 2005. Claimant did participate. Employer did participate through Colleen McGuinty and Connie Christians.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time temporary laborer at Metokote from February 29, 2004 through July 6, 2004 when he did not report for work and called Kathy at Metokote (not an employee of Sedona Staffing) at least two hours into his shift. His last day of work was July 2, 2004.

Claimant went to the doctor with a migraine headache in the morning before contacting Kathy, supervisor at Metokote, to see if he could come in and work the remainder of his shift that day since the injection for the migraine had improved his condition. She told him to call Christians to see if he could still report to work after missing at least two hours of his shift. He called Christians at Sedona and she told him his assignment was completed at Metokote. She declined to see claimant's medical documentation. There was no discussion or offer of any additional work available to him and employer had a history of calling claimant when work was available but did not call claimant after July 6, 2004 to offer employment.

#### REASONING AND CONCLUSIONS OF LAW:

Claimant's inconsistencies between the fact-finding interview and the March 28, 2005 hearing (he did not participate in the September 8, 2004 hearing) are fewer and less divergent than those of employer's witness, Christians. The recollection of claimant at the fact-finding interview was that he was having transportation problems that day, but in the hearing he recalled having a migraine headache with Metokote and Christians of Sedona Staffing declining his proffered medical excuse (which was not offered at hearing because he has moved twice since the separation).

Christians first testified in this hearing that she attempted to contact claimant on July 6 and there was no answer. After having the fact-finding interview notes read into the record, she recalled having left a message for claimant but did not speak to him directly. In the hearing on September 8, 2004 before administrative law judge Hendricksmeier, Christians was the sole witness in the hearing and reported the claimant had called her later on July 6 and reported his illness.

Thus, Christians' testimony is without credibility as to the lack of communication with claimant. While claimant has a credibility issue with the reason for the absence on July 6, 2004, it does not reach the heart of the dispute as to whether he reported the absence, the reason for the absence and whether there was communication about additional assignments. Thus, where employer's evidence conflicts with claimant's testimony, claimant is considered to be credible.

For the reasons that follow, the administrative law judge concludes the claimant was discharged from the temporary assignment for no disqualifying reason.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be

considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982).

Reported absences related to illness are excused for the purpose of the Iowa Employment Security Act. Although claimant reported his illness (migraine headache) on July 6 after his shift began, it was not unreasonable to attend to that illness first. Thus the late reporting of the absence was for good cause and it was not an unreported absence as employer initially claimed. Because the final absence for which he was discharged from the assignment was related to properly reported illness, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

Next, the administrative law judge concludes the claimant voluntarily left employment at Sedona Staffing with good cause attributable to the employer.

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.

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 purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of the temporary assignment. In this case, the employer had notice of the claimant's availability because Christians notified him of the end of the assignment, offered no further assignments and did not call him for work again as she had done in the past. Benefits are allowed.

#### DECISION:

The August 10, 2004, reference 03, decision is affirmed. The claimant was discharged from temporary assignment for no disqualifying reason. The claimant's separation from employment was attributable to the employer. The claimant had adequate contact with the employer about his availability as required by statute. Benefits are allowed, provided the claimant is otherwise eligible.

dml/pjs