IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DAVID G ROJOHN
Claimant

JACOBSON STAFFING COMPANY LC
Employer

APPEAL NO. 13A-UI-03233-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/03/13
Claimant: Respondent (1)

Iowa Code Section 96.5(1)(j) – Separation From Temporary Employment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 12, 2013, reference 03, decision that allowed benefits in connection with a February 6, 2013 separation. After due notice was issued, a hearing was held on April 16, 2013. Claimant David Rojohn participated. Danielle Aschliman represented the employer. Exhibits One and Two were received into evidence.

ISSUE:

Whether the claimant's February 2013 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: Jacobson Staffing Company, L.C., is a temporary employment agency. David Rojohn last performed work for the employer in a full-time, temp-to-hire work assignment at JELD-WEN. The assignment started on January 13, 2013. Mr. Rojohn last performed work in the assignment on the evening of February 5, 2013. During that shift, Mr. Rojohn got into a heated disagreement with a coworker. The coworker was handling doors in such a way that they were hitting Mr. Rojohn. Mr. Rojohn, in frustration, told the coworker that if another door hit him, he was going to hit the coworker back. A supervisor, Steve Bodensteiner, became involved in the dispute and sent both employees home for the day. Mr. Rojohn called Jacobson Staffing Company at that time to let them know that he had been sent home. On the next day, Mr. Rojohn left a message at the Jacobson Staffing telephone number asking whether he should report for work that evening. Mr. Rojohn said in his message that he would wait to hear from Jacobson Staffing. Mr. Rojohn did not hear from Jacobson Staffing and did not make further contact with the temporary employment firm.

On February 11, 2013, Jacobson Staffing personnel noted from payroll information submitted by JELD-WEN had documented Mr. Rojohn had having abandoned the employment. Jacobson Staffing attempted to contacted Mr. Rojohn, left a message, but did not receive a return call.

On March 18, in connection with the employer's appeal from a decision allowing benefits to Mr. Rojohn, Danielle Aschliman, Office Manager for Jacobson Companies Staffing Services, contacted supervisor Kelly Willett at JELD-WEN to ask his recollection of Mr. Rojohn's separation more than a month earlier. Mr. Willett had not been Mr. Rojohn's supervisor at JELD-WEN in January and did not have personal knowledge of Mr. Rojohn's separation from the assignment.

On January 11, 2013, Jacobson Staffing had Mr. Rojohn sign an orientation form that contained an end-of-assignment notice requirement in additional to several other policy provisions. The end-of-assignment notice requirement obligated Mr. Rojohn to contact the employer within three days of the end of an assignment or be deemed to have voluntarily quit.

REASONING AND CONCLUSIONS OF LAW:

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.

When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

This case comes down to the employer's failure to present testimony from persons with personal knowledge of the events surrounding Mr. Rojohn's separation from the assignment at JELD-WEN and from the employment with Jacobson Staffing. The employer has presented insufficient evidence to rebut Mr. Rojohn's testimony concerning how he came to separate from the assignment and from the employment. Accordingly, the weight of the evidence indicates that JELD-WEN suspended Mr. Rojohn in connection with an incident where Mr. Rojohn responded in frustration to a coworker hitting him with doors that were making their way down the production line. Ms. Rojohn's utterances made at the time did not rise to the level of misconduct. The employer presented insufficient evidence to establish otherwise. Mr. Rojohn testified from personal knowledge that he was sent home and immediately contacted Jacobson Staffing. The employer had presented insufficient evidence to rebut that assertion. Mr. Rojohn testified that he was on contact with the employer he next day about whether he should return to the assignment. The employer had presented insufficient evidence to rebut that assertion. The weight of the evidence indicates that Mr. Rojohn made timely contact with the employer but that the employer did not take steps to contact him until five days or six days after he last performed work in the assignment.

In addition to the other problems with the employer's case, the weight of the evidence establishes that the employer's end-of-assignment notice requirement did not comply with the statutory requirement of a clear and concise statement set forth on a document separate from a contract of hire. The orientation form that contained the notice requirement and several policy statements was not presented for the hearing, but, according to the employer's testimony contained several other policies and was essentially a contract of hire for the assignment.

The weight of the evidence indicates that Mr. Rojohn completed the assignment on February 5, 2013, when he completed all the work that, to his knowledge, the client business had available for him. Because the employer's end-of-assignment notice policy did not comply with the statute, Mr. Rojohn completed his obligation to the temporary employment agency when he completed the assignment on February 5, 2013.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Rojohn's February 5, 2013 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Mr. Rojohn is eligible for benefits provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Rojohn.

DECISION:

The Agency representative's March 12, 2013, reference 03, is affirmed. The claimant's February *5*, 2013 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The claimant is eligible for benefits provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

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