

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KURT A MCCLELLAN
Claimant

SPHERION STAFFING LLC
Employer

APPEAL 18A-UI-05169-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/25/18
Claimant: Appellant (2)

Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment

STATEMENT OF THE CASE:

Kurt A. McClellan (claimant) filed an appeal from the April 25, 2018, reference 02, unemployment insurance decision that denied benefits based upon the determination he voluntarily quit employment with Spherion Staffing, LLC (employer) when he did not contact it within three days of the end of his assignment to seek additional employment. The parties were properly notified about the hearing. A telephone hearing was held on May 23, 2018. The claimant participated. The employer participated through Client Services Supervisor Karen Thompson. The Claimant's Exhibit A was admitted without objection into the record.

ISSUES:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds that the facts of this case are largely uncontested. The claimant was employed as a temporary full-time employee with the employer's client John Deere in Skilled Assembly beginning on October 10, 2017, and he was notified he would be laid off due to a lack of work on March 28, 2018.

On March 28, 2018, the claimant left a message for the employer at its Fort Dodge location notifying it that he had been laid off and asking to speak to someone. No one called him back. The claimant continued to leave messages for the employer at the Fort Dodge office but no one answered the phone or called him back. He drove to the office during April but the office was closed. The claimant later learned that the employer's Fort Dodge office had permanently closed just before March 28, 2018 and no notice or additional instructions were provided to the current employees.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5(1)j provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. (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 paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce 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.

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.

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for and seeking work at the end of the temporary assignment. The claimant contacted the employer within three working days of the notification of the end of the assignment and there was no work available due to the closure of the Fort Dodge office. Accordingly, benefits are allowed, provided he is otherwise eligible.

DECISION:

The April 25, 2018, reference 02, unemployment insurance decision is reversed. The claimant's separation from employment was attributable to the employer. The employer had adequate knowledge about the conclusion of the claimant's assignment but had no further work available at the time. Benefits are allowed, provided the claimant is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn