

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HERLINDA O CORONA
Claimant

APPEAL NO. 14A-UI-03816-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QPS EMPLOYMENT GROUP INC
Employer

OC: 10/13/13
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Herlinda Corona filed a timely appeal from the April 3, 2014, reference 04, decision that denied benefits in connection with a February 28, 2014 separation from QPS Employment Group, Inc. After due notice was issued, a hearing was held on April 29, 2014. Ms. Corona participated and presented additional testimony through Veribiana Babalos. Rhonda Heffer de Santisteban represented the employer and presented additional testimony through Dan Garcia. Spanish-English interpreter Steven Rhoads assisted with the hearing. Exhibit One was received into evidence.

ISSUE:

Whether the claimant's 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: QPS Employment Group, Inc., is a temporary employment agency. Herlinda Corona is a Spanish-speaking person who performed work for QPS in two temporary work assignments. The most recent work assignment was a full-time, temp-to-hire assignment at Lennox in Marshalltown. Ms. Corona started the assignment in January 2014 and completed the assignment on February 28, 2014. The assignment ended at that point because Lennox decided to discontinue use of temporary workers. Ms. Corona's usual work days in the assignment were Monday through Friday. On March 3, 2014, Ms. Corona went to the QPS branch office to inquire about an additional assignment. She spoke to Branch Manager Dan Garcia. Mr. Garcia told Ms. Corona that he did not have any work for Ms. Corona at that time because the work he had available was too physical for her. Mr. Garcia did not document the March 3, 2014 contact with Ms. Corona.

Prior to the start of Ms. Corona's first assignment with QPS, QPS had Ms. Corona sign a 3-Day Reassignment Policy. The assignment contains a policy statement in English and the same policy statement in Spanish. The policy reads as follows:

Once you complete an assignment with a client, it is your duty to contact QPS for reassignment within three (3) working days as required by Iowa Code section 96.5-1-j. Failure to report within three (3) days for reassignment or to accept a new job assignment offered without reasonable cause will indicate that you have refused available work and quit working for QPS Employment Group.

Ms. Corona received a copy of the stand-alone policy statement document after she signed it.

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.

The employer's end-of-assignment notification policy does not comply with the notice requirement set forth in the statute. The employer's policy omits any reference to the unemployment insurance consequences of an employee's failure to contact QPS within three working days of the end of an assignment. Such notice of the unemployment insurance consequences is the most important requirement set forth in the statute pertaining to separations from temporary employment firms. Because the employer's policy did not comply with the requirement of the statute, the employer cannot claim the benefit of the statute. Because the statute did not apply, Ms. Corona fulfilled her obligation to the employer on February 28, 2014, when she completed the assignment at Lennox. She was under no obligation to seek further assignments through QPS. In any event, the weight of the evidence establishes that Ms. Corona did indeed contact QPS within three working days of the end of her assignment to request a new assignment. Ms. Corona made that contact on March 3, 2014, which was the very next working day following her completion of the assignment at Lennox.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Corona's February 28, 2014 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Ms. Corona is eligible for benefits provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Corona.

DECISION:

The claims deputy's April 3, 2014, reference 04, decision is reversed. The claimant's February 28, 2014, separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs