

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WILLIE J DOLLY
Claimant

PREMIER EMPLOYEE SOLUTIONS LLC
Employer

APPEAL 19A-UI-03612-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/31/19
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 April 26, 2019, (reference 03) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 21, 2019. Claimant did not participate. Employer participated through Recruiter Krista Engelbarts. Employer's Exhibit 1 was received into evidence. Official notice was taken of the administrative record.

ISSUES:

Did the 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 any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any 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 claimant was temporarily employed full-time as a production worker last assigned at Gates Hydraulic. The assignment began on October 1, 2018. Claimant was separated from the assignment, but not the employment, on March 3, 2019, when he failed to call in or report to work. Engelbarts notified the claimant that the assignment had ended via telephone on March 4, 2019. Claimant requested an additional assignment, but the only assignment available was at Jeld-Wen. Claimant explained to Engelbarts that he had previously worked for Jeld-Wen through a different staffing firm and could not work there again. Engelbarts advised claimant to check back weekly for more work in accordance with the employer's policies. Claimant failed to check back on a weekly basis as instructed.

The claimant filed a new claim for unemployment insurance benefits with an effective date of March 31, 2019. The claimant filed for and received a total of \$2,175.00 in unemployment

insurance benefits for the weeks between March 31, 2019 and May 18, 2019. The employer did participate in a fact finding interview regarding the separation on April 25, 2019. The fact finder determined claimant qualified for benefits.

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.

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. (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 lettered paragraph:

(a) "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.

(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 § 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 § 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.

Following a separation, the employer's policy requires employees to check in on a weekly basis for additional assignments. The employer's policy does not comply with the specific terms of Iowa Code § 96.5(1)j. Furthermore, 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. Claimant was notified by the employer that his assignment had ended and he requested additional work, but no work was available. Since he contacted the employer within three working days of the notification of the end of the assignment, requested reassignment, and there was no work available, no disqualification is imposed. As benefits are allowed, the issues of overpayment and participation are moot.

DECISION:

The April 26, 2019, (reference 03) unemployment insurance decision is affirmed. The 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. The issues of overpayment and participation are moot.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs