

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BARRY M DONALD
Claimant

ELS OF FLORIDA INC
Employer

APPEAL 21A-UI-12563-ML-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/31/21
Claimant: Appellant (2)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.5-1-j – Separation from Temporary Employer

STATEMENT OF THE CASE:

Barry Donald (claimant) appealed an Iowa Workforce Development May 14, 2021, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 9, 2021. The claimant participated personally. The employer participated by Jim Clyde, Senior Staffing Coordinator.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?
Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds:

The employer is a staffing agency. The claimant worked for the employer from September 15, 2020, to November 25, 2020, as a temporary employee. He was last assigned to work at ServPro as a full-time laborer.

Claimant signed a document on August 31, 2020, indicating he was to contact the employer within three working days following the completion of an assignment to request placement in a new assignment. The document was separate from the contract for hire.

The claimant last physically worked for ServPro on November 25, 2020. ServPro intended to hire claimant on as a full-time employee. Unfortunately, claimant went to jail and lost his license on November 29, 2020. Claimant contacted ServPro and notified his supervisor that he would not be able to work on Monday, November 30, 2020, as a result of his arrest. ServPro subsequently notified claimant that it was no longer interested in hiring claimant as a full-time

employee. ServPro further told claimant that he could not come back to work as a temporary employee.

Claimant contacted Sandra Brayer of ELS of Florida, Inc. on Tuesday, December 1, 2020. Claimant could not recall the exact conversation; however, he testified that he alerted Ms. Brayer of his communications with ServPro. He then asked Ms. Brayer if there were any other jobs available for him. According to claimant, Ms. Brayer told him that most of the jobs that were available would require a driver's license. Claimant did not follow up with Ms. Brayer to see if any other jobs became available.

ELS of Florida, Inc. does not require its temporary employees to carry a valid driver's license. The employer contracts with several companies for positions that do not require a valid driver's license. According to Mr. Clyde, the employer only requires that temporary employees have a means of getting to work, whether that be their own car or something like public transportation. Mr. Clyde testified the employer agreed to place claimant in September 2020, knowing he did not have a license at that time.

It is documented that Ms. Brayer offered to return claimant to work for Zerker Tire on December 11, 2020; however, claimant did not respond to said offer. Claimant testified he did not receive a call or a voicemail regarding an offer to work for Zerker Tire.

Ms. Brayer is no longer an employee of ELS of Florida, Inc. As such, she was not available to testify at hearing. Mr. Clyde did not document and could not recall whether claimant requested reassignment after learning that ServPro no longer wanted to hire him as a full-time employee.

REASONING AND CONCLUSIONS OF LAW:

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.

It is the duty of the administrative law judge, as the trier of fact, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using his own common sense and experience, the administrative law judge accepts claimant's testimony as credible. Ms. Brayer was not called as a witness to rebut claimant's testimony. As such, I accept claimant's testimony that he requested reassignment, but the employer did not have any work available for him at the time. I further accept claimant's testimony that he did not receive a call or a voicemail from Ms. Brayer on or about December 11, 2020, regarding a potential job placement.

In this case, Mr. Donald contacted the employer within three working days of learning that his assignment with ServPro had abruptly ended. 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. Mr. Donald did that. Benefits are allowed.

DECISION:

The March 25, 2021 decision (reference 01) is reversed. The claimant's separation from employment was attributable to the employer. Benefits are allowed, provided he is otherwise eligible.



Michael J. Lunn
Administrative Law Judge
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July 30, 2021
Decision Dated and Mailed

mjl/lj