

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVE N ALGER
Claimant

APPEAL NO. 09A-UI-19483-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LABOR READY MIDWEST INC
Employer

OC: 11/15/09
Claimant: Respondent (1)

Section 96.5-1-j – Separation from Temporary Employment

STATEMENT OF THE CASE:

Labor Ready Midwest Inc. filed a timely appeal from the December 18, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held by telephone on February 9, 2010. The claimant participated personally. The employer participated by Jessica Spinello, Branch Manager.

ISSUE:

The issue is 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: Steve Alger began his employment with Labor Ready Midwest Inc. in November 1998. In April 2009 Mr. Alger was assigned to work as a flagger for the Eliete Flagging Company and was paid by the hour. The assignment with Eliete Flagging Company came to an end on November 24, 2009 due to the end of the flagging season. Mr. Alger reported to Labor Ready Midwest Inc.'s facility that day and spoke with a representative, Bill Hale, informing Mr. Hale that the assignment had ended. Although Mr. Alger presented himself at the employer's facility for work, Mr. Hale informed the claimant there was "no work available at that time." Mr. Alger sought employment with other perspective employers and subsequently had been assigned to other job assignments through this temporary employment service.

It is the employer's position that Mr. Alger did not contact the company within three business days as required. It is Ms. Spinello's further position that the employer always has work available for applicants seeking employment that had Mr. Alger contacted the company within three days as required he would have been reassigned.

REASONING AND CONCLUSIONS OF LAW:

The question is whether Steve Alger's separation from the temporary employment agency was for good cause attributable to the employer. It was.

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment without good cause attributable to the employer.

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 evidence in the record shows Mr. Alger personally contacted Labor Ready Midwest Inc. on November 24, 2009, the same day that his assignment with Eliete Flagging came to an end. The claimant spoke personally with a representative of the company and was specifically informed that there was "no work available at that time." Mr. Alger reasonably concluded that he had complied with the company's three-day notice requirement and that there was no work available to him at that time. Although the administrative law judge is aware that Ms. Spinello maintains that an employee would not have made such a statement and that the company always has jobs available for all applicants, the administrative law judge concludes that Ms. Spinello's testimony strains credibility.

Based upon the evidence in the record and the application of the appropriate, the administrative law judge concludes Steve Alger's separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Mr. Alger is eligible for benefits providing that he meets all other eligibility requirements of Iowa law. The employer's account is chargeable for benefits paid to Steve Alger.

DECISION:

The Agency representative's December 18, 2009, reference 01, decision is affirmed. The claimant's separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The claimant is eligible for benefits, providing that he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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