

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAI R PHILLIPS

Claimant

APPEAL NO. 11A-UI-00945-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LABOR READY MIDWEST INC

Employer

OC: 11/21/10

Claimant: Appellant (2/R)

Section 96.5-1-j – Separation from Temporary Employer

Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Tai Phillips (claimant) appealed a representative's December 30, 2010 decision (reference 03) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Labor Ready Midwest (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 21, 2011. The claimant participated personally. The employer provided a telephone number but could not be reached at the time of the hearing. The administrative law judge spoke to a man who answered the telephone. He indicated the employer was most likely at lunch. A message was left for the employer. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The employer is a temporary employment service. The claimant performed services from September 11 through December 22, 2010. The claimant sought reassignment from the employer on December 23, 2010. No work was available.

A disqualification decision was mailed to the claimant address of record on December 30, 2010. The claimant was in the hospital from December 31, 2010, through January 13, 2011. He filed his appeal on the first day he could walk with assistance.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

Iowa Code section 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant did not have an opportunity to appeal the fact-finder's decision because he was bedridden. The claimant appealed the decision as soon as he was able. Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant voluntarily quit work without good cause attributable to the employer. The administrative law judge concludes the claimant was not separated from the employer for any disqualifying reason.

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.

The claimant did request reassignment and no work was available. He satisfied the requirements of Iowa Code section 96.5-1-j. Benefits are allowed.

The issue of whether the claimant is able and available for work is remanded for determination.

DECISION:

The representative's December 30, 2010 decision (reference 03) is reversed. The claimant's appeal is timely. The claimant satisfied the requirements of Iowa Code Section 96.5-1-j. Benefits are allowed. The issue of whether the claimant is able and available for work is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw