

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

K TOMETY
Claimant

APPEAL 22A-UI-01349-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

**OC: 03/28/21
Claimant: Appellant (1)**

Iowa Code § 96.6(2) - Timeliness of Appeal
Iowa Code § 96.5(2)a - Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a - Discharge for Misconduct
Iowa Code § 96.5(1)j - Voluntary Quitting - Temporary Employment

STATEMENT OF THE CASE:

Claimant, K. Tomety, filed an appeal from the October 12, 2021, (reference 05) unemployment insurance decision that denied benefits based upon finding a voluntary quit on December 11, 2020. The parties were properly notified of the hearing. A telephone hearing was held on February 7, 2022, at 9:00AM and the cases were consolidated. Claimant/appellant participated. The employer, Team Staffing Solutions, Inc., participated through Sarah Fiedler, risk manager. Judicial notice was taken of the administrative file.

ISSUES:

Is the Appeal Timely?
Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?
Did claimant make a timely request for another job assignment?
Is claimant able to and available for work?

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the undersigned finds:

Claimant was employed through the temp agency employer over different windows of time. For this matter, he started getting assignments September 30, 2019. His last assignment ended December 11, 2020. Claimant told both his employer and his temporary assignment employer that he had to travel back to his home country to take care of some family matters.

When claimant begins with the employer, he is provided a set of paperwork addressing the temporary assignment process and that claimant is to request a new job assignment within three days of an assignment ending and claimant signed off on the paperwork.

Here, claimant quit his temporary assignment on December 11, 2020, to travel out of country to address family matters back home. He told his temporary assignment this as well as his

employer. Claimant did not request a new assignment within three days of his ending his assignment, because he was leaving the country. Claimant checked back in with employer in April 2021 to see if his old assignment was available. It was not. Employer reached out to claimant in August of 2021 to see if he had an interest in employment, however, they did not hear back from claimant.

Claimant never received this decision and only learned of it through the appeals on the overpayment matters.

Claimant advises he will be once again travelling soon and does not know when or if he'll see this decision. It is important for someone to be checking Claimant's mail, so he does not miss any deadlines.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 96.6(2) provides, in pertinent part: “[u]nless 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.”

Iowa Admin. Code r. 871-24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

Appellant states he never received the decision in this matter. Appellant appeal of overpayment decisions resulted in the appeal being applied to this matter as well. Appellant's delay was due to delay or other action of the United States Postal Service. Claimant's appeal was not filed on time, but good cause has been established for the lateness of the appeal. Therefore, the appeal is deemed timely.

The next issue is whether claimant's separation was a voluntary quit for failing to timely request a new assignment. For the reasons that follow, the administrative law judge concludes it was a voluntary quit.

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.

It was proven that claimant was presented with a written copy of the reporting policy and claimant did not comply with the policy at the end of his assignment, according to Iowa Code § 96.5(1)j, the separation is disqualifying. The reason claimant did not request a new job assignment was he was going to travel out of the country. The employer asked when he would return, and he had no return date. Given this, the issue of separation from the temporary assignment is moot, however, claimant quit (leaving the country) falling under Iowa Admin. Code r. 871-24.25(20) which addresses leaving for compelling reasons with the absence exceeding 10 working days.

DECISION:

The October 12, 2021, (reference 05) unemployment insurance decision is **AFFIRMED**. Claimant voluntarily quit as he did not timely request another job assignment. Benefits are denied until such time as they have worked in and been paid wages for insured work equal to ten times their weekly benefit amount after the separation date, provided they are otherwise eligible. Remaining issue of separation from the underlying assignment itself is moot.



Darrin T. Hamilton
Administrative Law Judge

March 3, 2022
Decision Dated and Mailed

dh/mh