

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANTHONY J SMITH**  
Claimant

**APPEAL NO. 11A-UI-01701-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LABOR READY MIDWEST INC**  
Employer

**OC: 12/12/10**  
**Claimant: Appellant (2)**

Section 96.5(1)(j) – Separation From Temporary Employment

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the February 4, 2011, reference 01, decision that denied benefits in connection with a January 24, 2011 separation. After due notice was issued, a hearing was held on March 9, 2011. The claimant participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate.

**ISSUE:**

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: The employer is a temporary employment agency. Anthony Smith performed day-labor in December 2010 and January, 2011. The employer assigned the claimant to perform outside day-labor on the TD Ameritrade Baseball Stadium in Omaha. Each assignment lasted one day and each assignment was completed at the end of the shift each day. The employer and the client business would then decide whether to have the claimant return for an additional day-labor assignment. The claimant was expected to appear early in the morning to learn whether another day-labor assignment would be made available to him. On January 24, 2011, the claimant appeared for work and agreed to work in the day-labor assignment despite the bitter cold. The claimant encountered a job site supervisor when he was in route to a warming station to warm his hands. The claimant and others were concerned that the claimant might be at risk of frostbite. The claimant was at the warming station a couple minutes when the job site supervisor told him it was too cold to work and that he was going to send the claimant home early. The job site supervisor notified the temporary employment agency that same day that he would not make further use of the claimant. The claimant continued to appear for day-labor work and eventually was placed in another day-labor assignment.

## REASONING AND CONCLUSIONS OF LAW:

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 employer failed to appear for the hearing and thereby failed to present any evidence. The evidence in the record establishes that the claimant completed an assignment on January 24, 2011. The evidence fails to establish that the employer had an end of assignment notification policy that would comply with the requirements of Iowa code section 96.5(1)(j). In any event, the evidence establishes the claimant fulfilled any obligations that statute would have imposed upon him had the employer complied with its obligations under the statute. The claimant fulfilled his obligation to the employer on January 24, 2011 by staying at the work assignment until he was directed to leave. Mr. Smith's January 24, 2011 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Mr. Smith is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Smith.

**DECISION:**

The Agency representative's February 4, 2011, reference 01, decision is reversed. The claimant's January 24, 2011 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/kjw