

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY F VILLALOBOS
Claimant

APPEAL NO. 07A-UI-06147-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

USA STAFFING INC
LABOR WORLD OF IOWA
Employer

OC: 05-20-07 R: 02
Claimant: Respondent (1)

Section 96.5-1-j – Voluntary Quit from Temporary Employment
Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

USA Staffing, Inc. filed a timely appeal from an unemployment insurance decision dated June 13, 2007, reference 01, that allowed benefits to Anthony F. Villalobos. After due notice was issued, a telephone hearing was held July 3, 2007. Mr. Villalobos did not respond to the hearing notice. Branch Manager Rebecca Goeke testified for the employer which was represented by Jeff Oswald of UIS.

ISSUES:

Did the claimant leave work voluntarily with good cause attributable to the employer?
Was the claimant discharged for misconduct in connection with his employment?
Did the claimant refuse a suitable offer of work?

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Anthony F. Villalobos was a temporary employee of USA Staffing, Inc. He last worked on assignment for Montezuma Manufacturing.

On April 11, 2007, Branch Manager Rebecca Goeke told Mr. Villalobos not to return to that assignment. Mr. Villalobos had been absent without contacting either USA Staffing or Montezuma Manufacturing on April 4th, 9th, 10th, and 11th. Ms. Goeke did not, however, discharge Mr. Villalobos from employment with USA Staffing, Inc. Instead, she offered Mr. Villalobos further assignments in the construction field. Mr. Villalobos declined those assignments on April 11th and again on April 23rd. He did not file a claim for unemployment insurance benefits until the week of May 20, 2007..

REASONING AND CONCLUSIONS OF LAW:

The question is whether Mr. Villalobos' separation from employment was a disqualifying event. The administrative law judge concludes that it was not.

The separation must be viewed as a quit, not as a discharge. If Ms. Goeke had discharged Mr. Villalobos from employment with USA Staffing on April 11, 2007, the administrative law judge would have concluded that the separation was a disqualifying event because of excessive unexcused absenteeism. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) and 871 IAC 24.32(7). This analysis is not appropriate to the present case, however, because Ms. Goeke did not sever the claimant's relationship with his employment.

Iowa Code section 96.5-1-j disqualifies a temporary employee of a temporary employment service from unemployment insurance benefits under some circumstances if the employee does not contact the employer to request re-assignment within three working days after the end of a prior assignment. Assuming without finding that the employer had properly notified Mr. Villalobos of this obligation, the testimony of Ms. Goeke establishes that there was discussion of a further assignment on April 11, 2007. The conversation meets the requirement of Iowa Code section 96.5-1-j. No disqualification may be imposed.

A claimant may be disqualified for benefits for refusing a suitable offer of work if and only if both the offer and the refusal of work occurred during the claimant's benefit year. Mr. Villalobos opened a benefit year the week of May 20, 2007. The conversations between Mr. Villalobos and Ms. Goeke occurred in April, prior to the beginning of the benefit year. If the employer has offered work to Mr. Villalobos since May 20, 2007, it should promptly notify its nearest workforce development center.

DECISION:

The unemployment insurance decision dated June 13, 2007, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

da/pjs