

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LORENZO C HARRIS
Claimant

**ANNA ENTERPRISES
STAFFING SOLUTIONS**
Employer

APPEAL 16A-UI-04558-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/28/16
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the April 20, 2016 (reference 01) unemployment insurance decision that denied benefits based upon him voluntarily quitting without good cause attributable to the employer. The parties were properly notified about the hearing. A telephone hearing was held on May 2, 2016. Claimant, Lorenzo C. Harris, participated personally. Employer, Anna Enterprises Staffing Solutions, participated through Manager Bill Van Sloun. Employer's Exhibits A and B were admitted.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?

Did claimant quit by not reporting for additional work assignments within three business days of the end of the last assignment?

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Employer is a temporary employment firm. Employer has a written policy in place which states that if an employee fails to notify the employer within three working days of the end of their job assignment they will be considered to have voluntarily quit. See Exhibit B. Claimant signed the policy on June 22, 2015. See Exhibit B. Claimant also signed a statement that he received a copy of the policy and procedures. See Exhibit A.

Claimant's last job assignment was at Piggott Office Solutions working eight hours per day for three days as a general laborer. Claimant worked from November 17, 2015 through November 19, 2015. On November 19, 2015, claimant's supervisor on the job told him that he did not need to come back the next day and they would let the temporary employment firm know if they needed someone. On November 19, 2015, claimant called Michelle Drummond,

who was his contact at the employer, and notified her that it was his last day and asked if they had any other work. Claimant specifically remembers this conversation because he was desperate for work as he was behind on his hotel bill where he was residing. Ms. Drummond responded that they did not have any further work for him. Claimant could not pay his past due housing bill and ended up moving to Ames to stay with a friend following this job assignment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed.

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. 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.

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 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.

Each assignment with a temporary agency is considered a separate period of employment. The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of each temporary assignment so they may be reassigned and continue working.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

Claimant had detailed and consistent testimony regarding the date and time he contacted Ms. Drummond to inquire about more work. He was trying to get more work because he was past due on his hotel bill. The employer's witness did not speak to claimant personally and only had knowledge of any conversations by virtue of reviewing the employer's business records. The employer provided no firsthand witness, namely Ms. Drummond, to refute the claimant's testimony. After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors, and using her own common sense and experience, the administrative law judge finds claimant's testimony more credible than the employer's.

Claimant was told that this job assignment was for three days only before he accepted the job. He worked those three days. Claimant was told by Ms. Drummond, on November 19, 2015, that there was no further work for him. Since claimant credibly contacted the employer within three working days of the notification of the end of the assignment, requested reassignment, and there was no work available, benefits are allowed, provided he is otherwise eligible.

DECISION:

The April 20, 2016 (reference 01) unemployment insurance decision is reversed. The claimant's separation was attributable to the employer. Benefits are allowed, provided he is otherwise eligible.

Dawn R. Boucher
Administrative Law Judge

Decision Dated and Mailed

db/can