

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICHOLAS HAGEDON
Claimant

APPEAL NO. 15A-UI-10770-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MASTERTSON PERSONNEL INC
Employer

OC: 07/12/15
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Nicholas Hagedon filed a timely appeal from the October 12, 2015, reference 04, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on an Agency conclusion that Mr. Hagedon voluntarily quit the employment on June 26, 2015 without good cause attributable to the employer. After due notice was issued, a hearing was held on October 15, 2015. Mr. Hagedon participated. Jim Robertson represented the employer and presented additional testimony through Shannon Cleghorn. The hearing in this matter was consolidated with the hearing in appeal number 15A-UI-10771-JTT. The administrative law judge took official notice of the Agency's administrative record of benefits paid to Mr. Hagedon in connection with the claim.

For the reasons that follow, the appeal in this matter addresses the claimant's timely appeal from the October 12, 2015, reference 04, rather than an earlier reference 02 decision entered on September 12, 2015. The Appeals Bureau initially set up the appeal in this matter as an appeal from the reference 02 decision entered by Workforce Development claims deputy on September 14, 2015. However, pursuant to the Benefits Bureau administration, the claims deputy made an error in entering the reference 02 decision and the reference 02 decision was never mailed to the parties. Both parties confirm that they have not received a reference 02 decision. The claimant's appeal was prompted by the September 22, 2015, reference 03, overpayment decision and the appeal from that decision is addressed in appeal number 15A-UI-10771-JTT. On October 12, 2015, a Workforce Development claims deputy entered a reference 04 disqualification decision that amended and rendered moot the reference 02 decision. The administrative law judge requested the Appeals Bureau clerical staff amend the docketing of the claimant's appeal to reflect that that appeal addresses the reference 04 decision.

ISSUE:

Whether Mr. Hagedon separated from the employer for a reason that disqualifies him for unemployment insurance benefits or that relieves the employer of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Masterson Personnel, Inc., is a temporary employment agency. In August 2014, Masterson Recruiter Kristi Cain placed Nicholas Hagedon in a full-time, temp-to-hire work assignment at Sparboe Foods in New Hampton, Iowa. Mr. Hagedon's regular work hours in the assignment were 4:00 p.m. to 4:00 a.m., Monday evening through Saturday morning, though the assignment sometimes required overtime work on Saturdays. Mr. Hagedon's immediate supervisor in the assignment was Jim Fairall, Sparboe Foods Second Shift Supervisor. Mr. Hagedon's work duties involved loading raw egg solution into tanker trailers so that the product could be transported offsite. Once the tanker was full and the hatches closed, Mr. Hagedon was responsible for placing transport seals on the closed hatches so that recipient of the freight could be assured that contents of the tanker had not been tampered with during transport. A U.S.D.A. inspector would ordinarily be atop the tanker with Mr. Hagedon to witness as Mr. Hagedon placed the seals.

During the shift that started on June 25, 2015, Mr. Hagedon forgot to place transport seals on the closed hatches atop a particular tanker. No one caught the error until after the tanker left the Sparboe plant. The truck driver had to be summoned back to the plant. The content of the tanker had to be tested and the transport seals had to be placed before the tanker could again leave the Sparboe plant. When Mr. Hagedon reported for work the next day, Mr. Fairall sent him home. When Mr. Fairall did not specifically state that Mr. Hagedon was being sent home due to the transport seal issue from the day before, Mr. Hagedon understood that was most likely the reason he was being sent home. Mr. Fairall told Mr. Hagedon that Sparboe Foods or Masterson Personnel would be in contact with Mr. Hagedon. Mr. Fairall did not tell Mr. Hagedon that the assignment was done or that Mr. Hagedon should contact Masterson Personnel. Mr. Hagedon did not understand the assignment to be ended. Mr. Hagedon waited to hear from Sparboe Foods or Masterson Personnel, but did not hear from either company. Within a couple weeks, Mr. Hagedon heard from his roommate, who also worked at the Sparboe plant, that Mr. Hagedon had been discharged from the assignment. Mr. Hagedon contacted Sparboe and spoke to Mr. Fairall, who confirmed that the assignment was done. Within a day or two, Mr. Hagedon heard from representative from Masterson Personnel's Charles City office that the assignment was done, but that Masterson Personnel would continue to look for a new position for Mr. Hagedon. Mr. Hagedon expressed that he was interested in a new assignment. Mr. Hagedon was residing in New Hampton and was interested in another assignment in New Hampton. Mr. Hagedon had previously lost his driving privileges. The Masterson Personnel representative involved in the discussion about the assignment coming to an end did not document contact with Sparboe or with Mr. Hagedon.

On July 7, 2015, Shannon Cleghorn, a Masterson Personnel recruiter, was processing payroll and saw that Sparboe Food had not reported any hours work for Mr. Hagedon. Ms. Cleghorn sent an email message to a human resources representative, Ramona Houdek, at Sparboe, asking whether Mr. Hagedon had any hours that needed to be included in payroll processing. Ms. Houdek responded by email that Mr. Hagedon had quit and that there were no hours to report for him. Though it was Masterson's usual practice to follow up with employees purported to have quit, Ms. Cleghorn did not take any steps to follow up with Mr. Hagedon.

On July 31, 2014, before he started the assignment at Sparboe Food, Masterson Personnel had Mr. Hagedon sign a policy document that obligated him to contact Masterson Personnel within three working days of completion of an assignment to request a new assignment or be deemed to have voluntarily quit and risk being disqualified for unemployment insurance benefits. The employer provided Mr. Hagedon with a copy of the stand-alone policy document that he signed.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or

incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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.

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.

When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

In considering an understanding or belief formed, or a conclusion drawn, by an employer or claimant, the administrative law judge considers what a reasonable person would have concluded under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993).

The administrative law judge notes that Mr. Hagedon was the only witness who testified from personal knowledge regarding how the assignment came to an end. Ms. Cleghorn had not placed Mr. Hagedon in the assignment at Sparboe Food and, prior to July 7, 2015, had not been involved in monitoring his status in the assignment. Ms. Cleghorn's knowledge of the circumstances leading to the end of the assignment was limited to the short email from the Sparboe Food human resources representative Ramona Houdek. However, the evidence fails to establish that Ms. Houdek had personal knowledge concerning how or why Mr. Hagedon's work in the assignment came to an end. The administrative law judge notes that the employer elected not to present testimony through Masterson Personnel Recruiter Kristi Cain, even though Ms. Cain was the person who had placed Mr. Hagedon in the assignment and who had been monitoring his progress in the assignment. The employer presented insufficient evidence, and insufficiently direct and satisfactory evidence, to rebut Mr. Hagedon's testimony regarding the events surrounding the end of the assignment at Sparboe Food.

The weight of the evidence indicates that the Sparboe supervisor, Jim Fairall, sent Mr. Hagedon home on June 26, 2015 with the implied directive that he should wait to hear further from Sparboe Food or from Masterson Personnel. At the time Mr. Fairall sent Mr. Hagedon home, he did not tell him the assignment was ended and Mr. Hagedon did not know that the assignment was ended. The isolated incident of carelessness or negligence on June 25, 2015 was not sufficient to establish misconduct in connection with the assignment at Sparboe Food. Mr. Hagedon reasonably relied upon the directive issued by his supervisor and, for that reason alone, did not immediately initiate contact with Masterson Personnel, Inc. When Mr. Hagedon heard through the grapevine that the assignment was ended, he immediately followed up on that knowledge by contacting Mr. Fairall, who confirmed the assignment was ended. The weight of the evidence indicates that within a day or two of learning that the assignment had ended, Masterson Personnel contacted Mr. Hagedon regarding the assignment coming to an end and that Mr. Hagedon expressed interest in a further assignment at that time. That contact, within a day or two of learning that the assignment was ended, was sufficient to satisfy the requirement that Mr. Hagedon make timely contact with the employer to request a new assignment.

The weight of the evidence fails to provide a reasonable basis to conclude that the Masterson Personnel electronic records are complete or that Mr. Hagedon could have been in contact with

Masterson Personnel because the employer's computer records do not reflect such contact. Perhaps Ms. Cain could have spoken to that issue, had the employer elected to present testimony through her.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Hagedon's separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Mr. Hagedon is eligible for benefits provided she is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Hagedon.

DECISION:

The October 12, 2015, reference 04, decision is reversed. The claimant's involuntary separation from the temporary employment agency was not based on misconduct and 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

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