

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TIM ADAMS**  
Claimant

**SHORT STAFFED INC**  
Employer

**APPEAL 21A-UI-10208-SN-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/07/21**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5(1)(j) – Voluntary Quitting of Temporary Employment

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the April 6, 2021, (reference 01) unemployment insurance decision that denied benefits based upon his voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on June 25, 2021. Claimant participated and testified. Employer participated through Vice President of Operations Jessica Hinojosa and Branch Carla Martinez. No exhibits were entered into the record. The administrative law judge took official notice of the agency records.

**ISSUE:**

Whether the claimant's separation from employment was disqualifying?

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The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that:

The employer is a temporary employment service. The claimant performed services from June 22, 2015 through February 5, 2021. The claimant signed a document on June 22, 2015, indicating he was to contact the employer within three days following the completion of an assignment to request placement in a new assignment. The document did indicate the consequences of a failure to notify the employer. The claimant was given a copy of the document which was separate from the contract for hire. The claimant completed the last assignment on February 3, 2021. On that date, the claimant informed the employer's recruiter that he was unable to perform the assignment due to a work-related shoulder injury. The claimant requested an assignment he could perform within his restrictions. The employer did not provide him an alternate assignment within his restrictions.

The employer's witnesses did not have firsthand knowledge of the events leading to the separation. The employer contends it is excused from providing this testimony because of a policy it enacted on its own initiative stating that recruiters will not testify during hearings, even if they are the only person who would have personal knowledge of those events to rebut the claimant's testimony.

The employer also opted to not provide a copy of the assignment policy, any records of the recruiter's notes or the recruiter's rationale for coming to his or her conclusion.

There is no corresponding separation in November 2020 which aligns with the representative's determination.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was separated from employment for a non-disqualifying reason.

Iowa Code section 96.5(1)j provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce 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.

The decision in this case rests, at least in part, on the credibility of the witnesses. 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.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant's version of events to be more credible than the employer's recollection of those events.

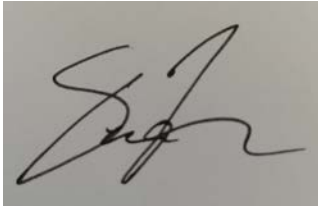
The administrative law judge does not find the employer's witnesses' testimony credible because neither witness had personal knowledge of the phone calls with the claimant that are central to the construction of his separation. In fact, the employer did not even provide records such as emails or other electronic records of the recruiter's contemporary memorialization of the events. The administrative law judge would like this to be a notice to the employer that in cases such as this, in which credibility determinations have to be made, that he will find the claimant's firsthand testimony more credible than witnesses who have no personal knowledge of the events. This is especially the case given the employer did not even provide basic documentary evidence to support their case. In the future, the employer should ask for a postponement if they do not believe they have time to provide credible testimony and exhibits.

The administrative law judge also wants to make clear that staffing firms such as the employer should clearly state if the separation is merely from an assignment or from the staffing firm entirely. It impacts a staffing firm's witnesses' credibility when the administrative law judge specifically raises this question and neither witness states that is in fact the nature of the separation, knowing full well that it is. If he cannot rely on them to make such simple clarifications, then it is difficult to rely on their testimony for more complex narratives relying on multiple levels of hearsay.

Under the Iowa Code the employer must advise the claimant of the three-day notice requirement and give the claimant a copy of that requirement. The notice requirement must be separate from the contract for hire. The employer followed these requirements of the code. However, the claimant requested to be placed at another assignment because he could not physically do the work at the assignment he was placed, due to a work-related injury. This ended his assignment and constitutes his request for another one simultaneously. The employer did not place him at another assignment within his restrictions. Therefore, benefits are granted, provided he is otherwise eligible.

**DECISION:**

The representative's April 6, 2021, (reference 01) is reversed. The claimant was separated from the employer for good cause attributable to the employer. Benefits are allowed provided the claimant is otherwise eligible.

A rectangular box containing a handwritten signature in black ink. The signature is stylized and appears to read 'S. Nelson'.

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Sean M. Nelson  
Administrative Law Judge  
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July 12, 2021  
Decision Dated and Mailed

smn/scn