

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALPHONSO BAYGBOE
Claimant

APPEAL 20A-UI-05101-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

OC: 04/05/20
Claimant: Respondent (1)

Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview
PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation (FPUC)

STATEMENT OF THE CASE:

The employer/appellant, Team Staffing Solutions Inc., filed an appeal from the May 28, 2020 (reference 03) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 1, 2020. The claimant participated personally. The employer participated through Sarah C. Fiedler, Risk Manager.

The administrative law judge took official notice of the administrative records. Employer Exhibits 1-2 were admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant quit by not reporting for an additional work assignment within three business days of the end of the last assignment?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer’s account be waived?
Is the claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was assigned at Muscatine Logistics from November 7, 2019 through January 7, 2020, and was separated from the assignment, but not the employment, on January 8, 2020.

Employer has a written reassignment policy which requires employees request a new assignment within three working days upon an assignment ending. Claimant signed receipt of the policy (Employer Exhibit 2).

On January 8, 2020, claimant arrived to the client assignment and after one hour and twenty minutes, was informed by the client that the assignment had ended. On the same day, claimant went to the employer's local office in Muscatine and met with a representative named Jennifer. (Jennifer McWade was the claimant's immediate supervisor as the account manager but the claimant was unsure of the representative's last name.) Claimant did request placement in a new assignment pursuant to the employer's notification requirement but was informed by Jennifer that no further assignments were available at the time.

Ms. McWade did not attend the hearing. Employer stated it documents contacts with applicants seeking new assignments and Ms. McWade did not record contact with the claimant on January 8, 2020 in employer software. Employer also disputed work not being available given the location and time of year (Fiedler testimony).

The administrative record reflects that claimant has not received unemployment benefits in the amount since filing his claim for benefits with an effective date of April 5, 2020.

The administrative record also establishes that the employer submitted documentation on May 25, 2020 in advance of the fact-finding interview scheduled for May 27, 2020. Ms. Fiedler provided an updated phone number, a one paragraph detailed explanation of the separation, and an attached copy of the reassignment policy signed by Claimant (Employer Exhibits 1-2). The administrative records reflect the phone number was not updated by IWD prior to the fact-finding interview, and Ms. Fiedler was not called as requested.

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.

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.

Iowa Admin. Code r. 871-24.26(15) provides:

Employee of temporary employment firm.

a. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm within three days of completion of an employment assignment and seeks reassignment under the contract of hire. The employee must be advised by the employer of the notification requirement in writing and receive a copy.

b. The individual shall be eligible for benefits under this subrule if the individual has good cause for not contacting the employer within three days and did notify the employer at the first reasonable opportunity.

c. Good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business; blinding snow storm; telephone lines down; employer closed for vacation; hospitalization of the claimant; and other substantial reasons.

d. Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer, or any other currently acceptable means of communications. Working days means the normal days in which the employer is open for business.

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. The plain language of the statute allows benefits for a claimant "who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment."

The claimant's assignment ended on January 8, 2020. The evidence is disputed as to whether the claimant contacted the employer within three business days to request a new assignment.

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.* The claimant provided specific, detailed information regarding his contact with the employer on January 8, 2020. The employer did not present the claimant's immediate supervisor, or employer records on claimant contact. In the absence of any other evidence of equal weight either explaining or contradicting the claimant's testimony, it is held that the weight of evidence is established in favor of the claimant.

Therefore, the administrative law judge concludes the claimant contacted the employer on the same day to request a new assignment and no work was available. Accordingly, the claimant's separation from employment is attributable to the employer. Benefits are allowed, provided he is otherwise eligible.

Because the claimant is eligible for benefits, the issues of overpayment and relief of charges are moot. (At this time, the claimant has not received any benefits.)

PL116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

....

(f) Fraud and Overpayments

(2) Repayment.--In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

Because this decision has determined the claimant is qualified to receive regular benefits, he is eligible for Federal Pandemic Unemployment Compensation (FPUC) if he meets all other requirements. (The employer would not be charged for FPUC.)

DECISION:

The May 28, 2020 (reference 03) initial decision is AFFIRMED. The claimant voluntarily quit the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible. Because claimant is qualified to receive regular benefits, he is eligible for Federal Pandemic Unemployment Compensation (FPUC) if he meets all other requirements.



Jennifer L. Beckman
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July 10, 2020
Decision Dated and Mailed

jlb/scn