

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELEAZAR R VILLANOVA
Claimant

APPEAL NO. 09A-UI-01820-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

USA STAFFING INC
Employer

**OC: 11-09-08 R: 02
Claimant: Respondent (1)**

Section 96.5-1 – Voluntary Leaving
871 IAC 24.26(19) – Casual Labor Job

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 27, 2009, reference 06, decision that allowed benefits. After due notice was issued, a hearing was held on February 26, 2009. The claimant did not participate as he did not answer the telephone when the administrative law judge called to begin the hearing. The employer did participate through Charles Macy, Employment Specialist.

ISSUE:

Did the claimant voluntarily quit his employment without good cause attributable to the employer or was he a causal or spot laborer?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a day laborer and was assigned on a daily basis to report to Henderson Construction where he would sometimes work as a flagger and other times work as concrete cutter's assistant. At the end of each day the claimant would report back to USA Staffing and turn in his time slip and he would be paid for the days work. The claimant completed each day's work and his assignment at Henderson's was not continuing. The claimant was required to show up at USA Staffing every morning by 6:30 a.m. at which time he would learn whether he was being sent back to Henderson's for work or to any other location. The claimant was not guaranteed any work on any particular day he showed up at USA Staffing.

The employer characterized the claimant as a day laborer. The claimant has not returned for any other assignments since October 3 as he is banned from the employer's property due to an incident that occurred in a bar in the same location.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was a spot laborer who elected not to report for a new assignment.

871 IAC 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.

The claimant was hired and paid on a day-by-day basis thus making him a spot laborer. The claimant completed all of the jobs he accepted. Under the terms of the spot labor employment relationship, and pursuant to the regulation cited above, the claimant did not quit and the employer did not discharge the claimant but was a spot laborer who elected not to report for any additional assignments. Therefore, the claimant is not disqualified from receiving unemployment insurance benefits.

DECISION:

The January 27, 2009, reference 06, decision is affirmed. The claimant is qualified to receive unemployment insurance benefits based on his employment relationship with the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css