

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PRINCE J LOMPEH**  
Claimant

**APPEAL NO. 12A-UI-12902-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEAM STAFFING SOLUTIONS INC**  
Employer

**OC: 09/09/12**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Prince Lompeh filed a timely appeal from the October 22, 2012, reference 01, decision that denied benefits in connection with an August 27, 2012 separation. After due notice was issued, a hearing was held on November 30, 2012. Mr. Lompeh participated. Sarah Fiedler represented the employer and presented additional testimony through Jennifer Hill. Exhibit One, B and C were received into evidence.

**ISSUE:**

Whether Mr. Lompeh's purported August 27, 2012 separation from the temporary employment agency was for good cause attributable to the employer. It was.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Team Staffing Solutions is a temporary employment agency. Prince Lompeh commenced getting work through Team Staffing in February 2012. On August 16, 2012, Prince Lompeh was in a part-time, temporary work assignment at Heinz in Muscatine when he suffered a knee strain. Mr. Lompeh's duties in the assignment involved continuous lifting of bags weighing 50 to 75 pounds. Mr. Lompeh's shifts lasted 10 hours. Mr. Lompeh reported his knee injury to his manager at Heinz. The Heinz manager directed Mr. Lompeh to report the injury to Team Staffing Solutions.

On August 17, Mr. Lompeh reported the injury to Team Staffing Solutions. Mr. Lompeh spoke to Sarah Fielder, Claims Administrator, and Jennifer Hill, Account Manager. Team Staffing Solutions sent Mr. Lompeh for evaluation at Trinity Occupational Medicine that same day. The doctor at Trinity evaluated Mr. Lompeh's leg, prescribed a medication, and instructed Mr. Lompeh to perform light-duty labor for a week. The doctor imposed a temporary 20-pound lifting limit and restricted Mr. Lompeh from squatting or climbing ladders. The doctor instructed Mr. Lompeh to stay off his legs over the weekend and to use an ice pack. Trinity provided Mr. Lompeh with two copies of the medical documentation, one copy for him and another copy for Team Staffing.

On August 17, Mr. Lompeh provided Team Staffing with a copy of the medical restriction document he had received from Trinity Occupational Health. Mr. Lompeh again met with Ms. Fiedler and Ms. Hill.

On Monday, August 20, Ms. Fiedler placed Mr. Lompeh in a light-duty assignment at Pearl City Outreach for that week only. Mr. Lompeh completed that assignment.

On Friday, August 24, Mr. Lompeh returned to Trinity Occupational Health for a follow up appointment. At that time, the doctor released Mr. Lompeh to immediately return to work without restrictions. Trinity provided Mr. Lompeh with two copies of the medical release, one for him and one for Team Staffing. That afternoon, Mr. Lompeh delivered a copy of his medical release to Team Staffing. Mr. Lompeh spoke with the receptionist at Team Staffing and asked to speak with Ms. Fiedler and Ms. Hill. The receptionist at Team Staffing accepted the medical release form from Mr. Lompeh, but told Mr. Lompeh that Ms. Fiedler and Ms. Hill were busy and could not meet with him. Mr. Lompeh wanted to return to the prior assignment at Heinz. The manager at Heinz had previously informed Mr. Lompeh that he could return once he obtained a full medical release. When Mr. Lompeh left the Team Staffing office on August 24 after his unsuccessful attempt to speak with Ms. Fiedler and Ms. Hill, he did so with the expectation that he would be returning to the Heinz assignment early the next week. Mr. Lompeh expected to hear from Team Staffing between 5:00 and 6:00 a.m. on Monday, August 27.

When Mr. Lompeh did not hear from Team Staffing early morning on Monday, August 27, Mr. Lompeh telephoned Team Staffing shortly before 9:00 a.m. Mr. Lompeh again spoke with the receptionist and requested to speak with Ms. Fiedler and Ms. Hill. Mr. Lompeh told the receptionist that he was calling to get his next assignment. The receptionist told Mr. Lompeh that Ms. Fiedler and Ms. Hill had not yet been in, but that she would have them get back to him. When Mr. Lompeh had not heard from Team Staffing by around 5:00 p.m., he again telephoned Team Staffing and again spoke to the receptionist. The receptionist again told him that neither Ms. Fiedler nor Ms. Hill was available.

Mr. Lompeh then waited until September 4 to go to the Team Staffing office. At that time, Mr. Lompeh was able to meet with Ms. Hill. Ms. Hill told Mr. Lompeh that he was no longer needed at Heinz because he had not been performing to that company's standards. Mr. Lompeh asked why Team Staffing had waited so long to tell him that, but did not receive an answer. Ms. Hill directed Mr. Lompeh to return his Heinz equipment. Mr. Lompeh returned with the equipment that same day and requested to speak again with Ms. Hill. At that time, Mr. Lompeh was told that Ms. Hill was busy and could not meet with him.

On September 6, Mr. Lompeh checked in with Team Staffing for more work.

In February 2012, Team Staffing had Mr. Lompeh sign a Notice Requirement Availability for Work Assignments document. The document obligated Mr. Lompeh to contact the employer within three working days of completing an assignment to request a new assignment or the employer would deem him to have voluntarily quit and the quit could negatively impact his claim for unemployment insurance benefits. The policy statement was separate from the contract of employment. Mr. Lompeh received a copy of the policy statement he signed.

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

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.

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 weight of the evidence indicates that Mr. Lompeh last performed work in the Heinz assignment on August 17, 2012. Mr. Lompeh completed the assignment on that day. The assignment came to an end because Mr. Lompeh had suffered injury in the assignment and the client company would not allow him to return unless and until he had a full medical release. Mr. Lompeh reasonably expected that he would return to the assignment once his knee issue was resolved. Mr. Lompeh promptly notified the employer, Team Staffing, of his injury. Team Staffing sent Mr. Lompeh for medical evaluation on Friday, August 17 and Mr. Lompeh promptly provided the employer with a medical release that restricted him to light-duty work for one week. The next Monday, the employer placed Mr. Lompeh in a special, one-week, light-duty assignment. Mr. Lompeh accepted and completed that assignment. The employer had no more work for Mr. Lompeh in the special, light-duty assignment once Mr. Lompeh was released to return to work with restrictions on the afternoon of August 24, 2012. Mr. Lompeh promptly provided Team Staffing with a copy of the full medical release. Up to that point, Mr. Lompeh's pattern of conduct indicated a good faith desire to continue in the employment with Team Staffing.

On the afternoon of August 24, Mr. Lompeh went to the Team Staffing office to deliver the full medical release that he believed would allow him to return to the assignment at Heinz. Mr. Lompeh requested to speak with Ms. Fiedler or Ms. Hill, the two people who had the authority to tell him whether he could return to the assignment or would have to pursue another assignment. Team Staffing denied Mr. Lompeh the opportunity to speak with either representative. On Monday, August 27, Mr. Lompeh contacted Team Staffing twice to get approval and/or clarification regarding whether he would be returning to the Heinz assignment. Mr. Lompeh's pattern of conduct continued to demonstrate a good faith effort to remain employed with Team Staff and to seek further work through that company. Team Staffing again denied Mr. Lompeh the opportunity to speak with a representative. After the multiple, unsuccessful attempts to speak with a Team Staffing representative about further work, and after making clear that he was seeking further work through Team Staffing, Mr. Lompeh reasonably waited a week to hear further from Team Staffing. When Mr. Lompeh had not heard from the employer by September 4, the day after Labor Day, he went to the Team Staffing office and only then learned that he would not in fact be returning to the assignment at Heinz. Mr. Lompeh's efforts were sufficient to indicate to the employer, and to the administrative law judge, timely and earnest contact with the employer to request further work through the employer.

The administrative law judge notes that neither party presented testimony from the receptionist with whom Mr. Lompeh had contact. The administrative law judge notes that the employer was in the better position to secure the receptionist for the hearing.

The weight of the evidence indicates a separation that was effective August 24, 2012. The claimant did make timely contact with the employer to request further work. The separation was for good cause attributable to the employer. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

**DECISION:**

The Agency representative's October 22, 2012, reference 01, decision is reversed. The claimant's August 24, 2012 separation from the temporary employment agency 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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