

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK W CRABTREE
Claimant

APPEAL NO. 08A-UI-00374-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**HELPING HANDS
TEMPORARY SERVICES INC**
Employer

**OC: 03/11/07 R: 02
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Mark Crabtree filed a timely appeal from the December 21, 2007, reference 06, decision that denied benefits. After due notice was issued, a hearing was held on January 28, 2008. Mr. Crabtree participated. Arlene Wenzel, owner, represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 07A-UI-11844-JTT, which concerns the claimant's availability for work. The decision in this matter should be read in conjunction with the decision entered in Appeal Number 07A-UI-11844-JTT.

ISSUE:

Whether the claimant's separation from the temporary employment agency was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mark Crabtree established his employment relationship with Helping Hands Temporary Services in 2002 and worked in several assignments over the course of five and half years. Mr. Crabtree worked several full-time assignments at the Barilla plant in Ames. The last assignment at Barilla ended on April 13, 2007. On August 8-9, 2007, Mr. Crabtree worked an assignment at Quality Inn in Ames. On August 13 through September 7, 2007, Mr. Crabtree worked an assignment at the City of Ames Resource Recovery Center. On September 11-12, 2007, Mr. Crabtree worked an assignment at Becker Underwood in Ames. Mr. Crabtree voluntary terminated that assignment. On September 18-20, and during September 27 through October 9, 2007, Mr. Crabtree worked additional assignments at the City of Ames Resource Recovery Center.

Mr. Crabtree's most recent work assignment through Helping Hands Temporary Services was at Pinnacle Apartments in Boone. Mr. Crabtree started the part-time assignment on October 23, 2007. Mr. Crabtree's duties included general maintenance and cleaning apartments. During the first week in the assignment, Mr. Crabtree worked 22.5 hours. During the next week in the assignment, Mr. Crabtree called in sick one day, but worked 30 hours. During the third week in the assignment, Mr. Crabtree called in sick one or two days, but worked 26.5 hours. During the

last week in the assignment, Mr. Crabtree was only scheduled to work 15 hours on November 20-21, 2007. Mr. Crabtree established an "additional claim" for unemployment insurance benefits that was deemed effective on November 18, 2007. The claim for benefits was established in response to the reduction in hours at the Pinnacle Apartments assignment. During the week of November 25-30, Mr. Crabtree was again only scheduled to work 15 hours on Tuesday, November 27, and Wednesday November 28.

On November 26, Mr. Crabtree contacted Helping Hands to request an additional assignment so he could get more hours than he was receiving in the Pinnacle Apartment assignment. Helping Hands did not have another assignment for Mr. Crabtree.

On November 27, Mr. Crabtree was absent from the assignment at Pinnacle Apartments due to a lack of transportation from his home near Woodward to the assignment in Boone. Mr. Crabtree's car had broken down. Mr. Crabtree did not notify Helping Hands or Pinnacle Apartments that he would be unable to appear for the assignment. The Helping Hands policy required Mr. Crabtree to notify Helping Hands if he needed to be absent. Helping Hands learned of the absence when the Pinnacle Apartments representative called to report that Mr. Crabtree had not appeared for a scheduled shift. On November 27, Helping Hands representative Amanda Bell telephoned Mr. Crabtree to see why he had not appeared for the assignment. Mr. Crabtree told Ms. Bell that his car had broken down. Ms. Bell contacted Pinnacle Apartments to explain Mr. Crabtree's absence, but Pinnacle Apartments had determined to end the assignment.

Though Mr. Crabtree had been discharged from the assignment at Pinnacle Apartments, Helping Hands did not sever the employment relationship with Mr. Crabtree. Helping Hands did not immediately have another assignment available for Mr. Crabtree.

Helping Hands has a policy that required Mr. Crabtree to contact the employer within three days of the end of an assignment to notify the employer that he was available for additional assignments. However, the policy is not a stand-alone policy and contained on a document that sets forth various conditions of employment and work rules.

Mr. Crabtree lacked transportation to further assignments. On December 3, Mr. Crabtree contacted Helping Hands to say he was available for another assignment. However, Mr. Crabtree still lacked transportation. On December 14, Helping Hands contacted Mr. Crabtree about an assignment in Ames, but Mr. Crabtree indicated his car was still broken down. On December 17, Helping Hands contacted Mr. Crabtree about an assignment in Ames, but Mr. Crabtree indicated his car was still broken and he lacked transportation. On December 31, Mr. Crabtree notified Helping Hands that he still lacked a car, but intended to get one that day. Mr. Crabtree did not in fact get a car and still lacks a car. Mr. Crabtree's driving privileges were revoked by the State of Iowa.

REASONING AND CONCLUSIONS OF LAW:

The evidence in the record indicates that Mr. Crabtree's "additional claim" for benefits was prompted by a reduction in his work hours from 22-30 down to 15 hours per week. The reduction was effective the week of November 18-24, 2007. The reduction in hours was a substantial change in the conditions of Mr. Crabtree's employment and created a "partial employment" situation. An individual shall be deemed partially unemployed in any week in which, while employed at the individual's then regular job, the individual works less than the regular week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars. Iowa Code section 96.19(38)(b). Mr. Crabtree was eligible for benefits

during the benefit week that ended November 24, 2007. The evidence indicates the partial unemployment continued into the week of November 25-December 1, 2007. However, Mr. Crabtree was also discharged from the assignment during that week, on November 27.

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.

871 IAC 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.

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's *unexcused* absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). One unexcused absence does not constitute misconduct. See Sallis v. Employment Appeal Board, 437 N.W.2d 895 (Iowa 1989).

The evidence indicates that Mr. Crabtree was discharged from the assignment after he was absent on November 27, due to a lack of transportation. This absence was an unexcused absence under the applicable law. The evidence fails to indicate any additional unexcused absences prior to November 27. Accordingly, the evidence does not establish that Mr. Crabtree

was discharged from the assignment for excessive unexcused absences or misconduct. The discharge from the assignment would not disqualify Mr. Crabtree for benefits. Mr. Crabtree would be eligible for benefits, provided he met all other eligibility requirements.

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 employer lacks a notification policy that complies with the requirements of Iowa Code section 96.5(1)(j). In addition, the contact between Ms. Bell and Mr. Crabtree on November 27, constituted contact within three days of the end of the assignment that would have fulfilled Mr. Crabtree's obligation under the Code section.

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

DECISION:

The Agency representative's December 21, 2007, reference 06, decision is reversed. The claimant was partially unemployed during the benefit week that ended November 24, 2007 and was eligible for benefits during that benefit week. The claimant's November 27, 2007 separation from the temporary employment assignment and from the temporary employment agency was for good cause attributable to the temporary employment agency. The claimant was and is eligible for benefits provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant. However, the decision in this matter should be read in conjunction with the decision entered in Appeal Number 07A-UI-11844-JTT.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw