

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**SCOTT D FREITAG
426 E 1ST
SPENCER IA 51301**

**SALEM MANAGEMENT INC
D/BA RUDY SALEM
EMPLOYMENT AGENCY
PO BOX 3124
SIOUX CITY IA 51102-3124**

**Appeal Number: 04A-UI-10025-RT
OC: 08-15-04 R: 01
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant, Scott D. Freitag, filed a timely appeal from an unemployment insurance decision dated September 9, 2004, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on October 7, 2004, with the claimant participating. Stacy Kraft, Accounting Clerk, participated in the hearing for the employer, Salem Management, Inc., doing business as Rudy Salem Employment Agency. Department Exhibit 1 was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency.

The claimant first was employed by the employer on or about February 17, 2002. The claimant's most recent assignment was a long-term assignment with Freudenberg-Simrit. That assignment began in November 2003. The claimant completed that assignment on August 2, 2004, when he was laid off and the assignment was completed. The claimant did not notify the employer, a temporary employment firm, until August 10, 2004, and then, the claimant did not call the employer, but his wife did. His wife informed the employer that the claimant was seeking work. The employer told the claimant's wife that the claimant himself must contact the employer. The claimant had not done so as of August 23, 2004. The claimant did not notify the employer right away because he thought that the layoff from Freudenberg-Simrit was temporary, but it was not, and became permanent. The employer has a policy or rule set out in a separate writing, as shown at Department Exhibit 1. It was signed by the claimant and provides that he must notify the employer within three days of the completion of each employment assignment, and that a failure to do so indicates that he is not available for work and will be deemed a voluntary quit. The claimant did not comply with this rule.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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.

The administrative law judge concludes that there is a preponderance of the evidence that the claimant was a temporary employee of the employer herein, a temporary employment firm. The claimant's most recent assignment to Freudenberg-Simrit was completed on August 2, 2004. The claimant did not notify the employer within three working days of the completion of this assignment. In fact, the claimant did not notify the employer until August 10, 2004, eight days after the completion of his assignment, and then only by his wife. Even the claimant conceded that he did not comply with the employer's rules right away. The claimant was advised in writing of his duty to notify the employer, a temporary employment firm, upon the completion of an employment assignment within three working days. The claimant also did not demonstrate good cause for not so contacting the employer. The claimant testified that he did not notify the employer right away because he thought it was a temporary layoff. However, when the administrative law judge asked the claimant if he did not feel that he should have notified the employer even in the event of a temporary layoff, the claimant testified that he had, in fact, notified the employer; but then stated it was not within three working days, but a week or a week and a half later, and then conceded the first call was from his wife on August 10, 2004. The administrative law judge concludes that the claimant did not demonstrate by a preponderance of the evidence good cause for not contacting the employer within three working days. The claimant was advised in writing of the notification requirement and signed a document therefore that is clear and concise, as shown at Department Exhibit 1. That document appears to be separate from any contract of employment and a copy appears to have been provided to the claimant.

Accordingly, and for all the reasons set out above, the administrative law judge is constrained to conclude that the claimant's failure to notify the employer, a temporary employment firm, as set out above, is deemed a voluntary quit. The issue then becomes whether the claimant quit without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The claimant did not provide any reasons attributable to the employer for his quit. There is not a preponderance of the evidence that the claimant's working conditions, either with the employer or with the assignee, Freudenberg-Simrit, were unsafe, unlawful, intolerable or detrimental, or that he was subjected to a substantial change in his contract of hire. Rather, it appears to the administrative law judge that the claimant quit simply because he did not want to notify the employer right away because he believed he was on a temporary layoff. The administrative law judge concludes that this is not good cause attributable to the employer. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily without good cause attributable to the employer when he failed to notify the employer, a temporary employment firm, within three working days of the completion of his assignment and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

DECISION:

The representative's decision dated September 9, 2004, reference 01, is affirmed. The claimant, Scott D. Freitag, is not entitled to receive unemployment insurance benefits until or unless he requalifies for such benefits, because he left his employment voluntarily without good cause attributable to the employer when he failed to notify the employer, a temporary employment firm, within three working days of the completion of his last work assignment.

b/b