

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ELIZABETH A KLESEL**  
Claimant

**APPEAL NO. 13A-UI-00923-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KIMCO CORPORATION**  
Employer

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

Section 96.4-3 – Able and Available for Work/Still Employed Same Hours & Wages

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from a representative's decision dated January 18, 2013, reference 02, which denied unemployment insurance benefits as of December 9, 2012 finding that the claimant was still employed at the same hours and wages as in the original agreement of hire and could not be considered to be partially unemployed. After due notice was provided, a telephone hearing was held on February 25, 2013. Claimant participated. Although duly notified, the employer did not respond to the notice of hearing and did not participate.

**ISSUE:**

The issue is whether the claimant is still employed at the same hours and wages as in the original agreement of hire.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Elizabeth Klesel was employed by Kimco Corporation from June 2009 and initially left her employment with Kimco Corporation in December 2012 to take new employment with the Northern Iowa Community College. Ms. Klesel began employment with Northern Iowa Community College and earned wages from her new employment. Ms. Klesel had been employed by Kimco Corporation as a part-time cleaner assigned to work at the JC Penney Company and her immediate supervisor was Jamie Winters.

After leaving her employment with Kimco Corporation to accept new previously secured preferred employment with the Northern Iowa Community College, Ms. Klesel was asked by her former supervisor at Kimco to fill in for him on two specific Saturdays in the month of December 2012.

Ms. Klesel specifically agreed to be employed by Kimco only on a temporary basis for those two Saturdays and fulfilled the agreement between herself and Kimco filling in for Mr. Winters on both Saturdays in December 2012. After that date the new employment relationship with Kimco came to an end by its own terms. Ms. Klesel continued to be employed at her new job with

Northern Iowa Community College and remained with the community college at the time of hearing.

**REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes the claimant is employed part time or on call at the same hours and wages as originally agreed with Kimco Corporation. She is not.

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 evidence in the record establishes that the claimant does not continue to be employed on a regular basis by Kimco Corporation as an on-call or part-time worker. The evidence in the record shows that after leaving her employment with Kimco in October 2012 the claimant was asked by her previous supervisor at Kimco to return to fill in for him at a Kimco location on two specific dates in the month of December 2012. The claimant agreed only to perform services for Kimco for the period of the contract of hire and completed the contract when the two Saturday jobs were completed.

The administrative law judge concludes that the claimant is not employed on a regular basis at the same hours and wages as originally agreed upon when she was hired by Kimco in June 2009 and concludes that the claimant has completed her limited contract of employment that took place during December 2012. The claimant's employment came to an end in December 2012 when she fulfilled the terms of the temporary contract and her separation at that time was not a disqualifying event for unemployment insurance purposes.

**DECISION:**

The representative's decision dated January 18, 2013, reference 02, is reversed. Claimant is not still employed at the same hours and wages as originally agreed in June 2009 when she began employment with Kimco Corporation. Claimant was most recently employed on a temporary basis under a specific contract of hire which was completed when she completed the terms of that agreement. The claimant's separation from her temporary contract with Kimco in December 2012 is non disqualifying. Claimant is eligible to receive unemployment insurance benefits, providing she has met all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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