

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DUSKA D NEVE

Claimant

APPEAL NO. 17A-UI-01880-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES USA LLC

Employer

OC: 01/01/17

Claimant: Appellant (2/R)

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

STATEMENT OF THE CASE:

Duska Neve filed a timely appeal from the February 13, 2017, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Ms. Neve voluntarily quit without good cause attributable to the employer, effective January 5, 2017 by failing to contact the employer within three working days of the completion of a work assignment after being advised in writing of her obligation to do make such contact. After due notice was issued, a hearing was held on March 13, 2017. Ms. Neve participated. Jennifer Petsche, Senior Staffing Consultant, represented the employer. Exhibits A and B were received into evidence. The administrative law judge took official notice of the fact-finding materials and marked two pages of the fact-finding materials as Department Exhibits D-1 and D-2 for identification purposes.

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: Kelly Services USA, L.L.C. is a temporary employment agency. Duska Neve performed work for Kelly Services in a single, part-time, long-term assignment at Transamerica/Aegon. Ms. Neve began the assignment in 2013 and completed the assignment on Friday, December 30, 2016. Ms. Neve's primary duties in the assignment were data-entry. Ms. Neve also performed work related to accounts receivable and prepared paperwork to be scanned. Ms. Neve's work hours were 8:00 a.m. to 2:00 p.m., Monday through Friday, 30 hours per week. Ms. Neve limited herself to these hours because she assisted her husband with a self-employment venture in the afternoons. Ms. Neve's immediate supervisor at Transamerica/Aegon was Carla Duggan. When Ms. Neve required assistance from Kelly Services, she generally had contact with Lori Smith, District Manager. Ms. Neve resided in Vinton at all relevant times.

On November 30, 2016, Ms. Smith and Ms. Duggan notified Ms. Neve and other Kelly employees assigned to Transamerica/Aegon that their assignments would be ending on

December 30, 2016 due to a lack of work. After the group meeting, Ms. Smith spoke with Ms. Neve about a possible assignment with the City of Cedar Rapids. At the time of the discussion, Ms. Smith did not know what the assignment would pay. Ms. Smith told Ms. Neve that the assignment work hours would be 9:00 a.m. to 1:00 p.m. and that the work would be administrative in nature. Ms. Neve wanted to know the pay and whether she would have to pay for parking. Ms. Smith agreed to get back to Ms. Neve with additional information about the possible Cedar Rapids assignment. Ms. Neve told Ms. Smith that she was available for data-entry work assignments with work hours from 8:00 a.m. to 2:00 p.m., Monday through Friday. Ms. Neve contacted Ms. Smith a day or two later about and learned that the Cedar Rapids assignment was no longer available. Ms. Neve expressed interest in meeting with Ms. Smith to discuss other possible work assignments.

On December 21, 2016, when Ms. Neve was still in the assignment at Transamerica/Aegon, Melissa Mitchell, Kelly Services Senior Staffing Supervisor, left a voice mail message for Ms. Neve regarding a possible assignment in Conroy, Iowa. Ms. Neve returned the call after the close of business on December 21, 2016 and left a voice mail message for Ms. Mitchell. In her message, Ms. Neve asserted that the drive to Conroy was be an hour and that she was not interested in commuting so far, when her work in Cedar Rapids had only involved a 20-25 minute commute. Ms. Neve overstated the commuting time to Conroy, but the commute would have been longer than the commute to Cedar Rapids.

After Ms. Neve completed her Transamerica/Aegon assignment on December 30, 2016, she next had contact with Kelly Services on January 5, 2017. Kelly Services had been closed on Monday, January 2, 2017 and was next open on Tuesday, January 3, 2017. On that day, Ms. Mitchell of Kelly Services telephoned Ms. Neve to confirm that she was looking for part-time employment. On that same day, Ms. Neve returned the call and left a message confirming that she was indeed looking for a part-time assignment with hours comparable to those had had at Transamerica/Aegon, was interested in any such assignment Kelly Services might have, and requested more information. When Ms. Neve did not hear back from the employer, she assumed the assignment in question had been filled. The parties did not have further contact until February 2017.

At the time, Ms. Neve began her employment with Kelly Services in 2013, she signed a Notification of Position End policy that obligated her to contact Kelly Services within three working days of the end of an assignment or be deemed a voluntary quit and risk impact to her unemployment insurance benefits eligibility. The policy statement appeared as stand-alone document. Ms. Neve received a copy of the policy statement she signed.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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. (1) 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.

(2) 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.

(3) For the purposes of this paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(b) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

Iowa Admin. Code r. 871-24.26(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 a separation that was for good cause attributable to the employer. The employer's Notification of Position End complies with the requirements set forth at Iowa Code Section 96.5(1)(j). The employer had Ms. Neve sign the policy and provided Ms. Neve with a copy of the policy. Prior to the Transamerica/Aegon assignment coming to an end on December 30, 2016, Ms. Neve and Kelly Services had commenced a discussion about possible future assignments. At the time Ms. Neve completed the Transamerica/Aegon assignment on December 30, 2016, the employer was aware that Ms. Neve had completed the assignment and that Ms. Neve was interested in additional assignments so long as they provided the same sort of hours and commuting distance she had enjoyed during almost four

years in the Transamerica/Aegon assignment. Due to the New Year's Day holiday, the next working day after Ms. Neve completed the Transamerica/Aegon assignment was Tuesday, January 3, 2017. The third working day after the assignment was January 5, 2017. On that day, the employer made contact with Ms. Neve and Ms. Neve returned the contact to express interest in a possible new assignment. This contact satisfied the requirement imposed on Ms. Neve by Iowa Code section 96.5(1)(j). Because the evidence establishes a separation for good cause attributable to the temporary employment agency, Ms. Neve is eligible for benefits provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Neve.

Because the employer asserts that the employer offered Ms. Neve a suitable assignment in February 2017, this matter will be remanded to the benefits bureau for determination of whether Ms. Neve is disqualified for benefits based on refusal of suitable work.

DECISION:

The February 13, 2017, reference 01, decision is reversed. The claimant's January 5, 2017 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The claimant is eligible for benefits provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

This matter is remanded to the Benefits Bureau for adjudication of whether the claimant is disqualified for benefits based on February 2017 refusal of suitable work.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs