

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERIE M ROBERTS

Claimant

APPEAL NO: 15A-UI-07526-LDT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMEDY INTELLIGENT STAFFING INC

Employer

OC: 06/07/15

Claimant: Respondent (5)

Section 96.4-3 – Able and Available
Section 96.5-1-j – Temporary Employment
871 IAC 24.26(15) – Temporary Employment

STATEMENT OF THE CASE:

Remedy Intelligent Staffing, Inc. (employer) appealed a representative's June 26, 2015 decision (reference 01) that concluded that Sherie M. Roberts (claimant) was able and available for work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 11, 2015. The claimant participated in the hearing. Vicky Matthias appeared on the employer's behalf. The parties waived notice on the additional question as to whether the claimant was qualified to receive unemployment insurance benefits after a potential separation from a temporary employment firm. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant eligible for unemployment insurance benefits by being able and available for work? Was there a disqualifying separation from employment?

FINDINGS OF FACT:

The employer is a temporary staffing agency with an office in Waterloo, Iowa. The claimant worked on an assignment as a full-time production worker on the third shift at a Waterloo business client through the morning of Friday, June 5, 2015. The assignment ended that date because the business client deemed the assignment to be completed. The business client informed the employer of the completion of the assignment on that date, and the employer, through senior staffing consultant Matthias, informed the claimant by phone call later on June 5, 2015.

The employer asserted that the claimant did not separately contact the employer within three business days of the end of the assignment as required by the employer's policies and as indicated on an acknowledgement form signed by the claimant to avoid being considered to be a voluntary quit. The claimant testified that on June 5 when she was called and told the assignment was ended that she had asked then if there was other work and had been told there

was not. The employer acknowledged that the claimant did call the office on Wednesday, June 10 and that at that time she was told there was nothing available on the third shift. As she had with the recently completed shift, the claimant had previously found employment working on the third shift in the area. The employer asserts, however, that the claimant did not generally make herself available until June 15, but even then she was restricting herself to third shift for production work.

REASONING AND CONCLUSIONS OF LAW:

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, be available for work, and be earnestly and actively seeking work. Iowa Code § 96.4-3.

Rule 871 IAC 24.22(2)a provides:

a. Shift restriction. The individual does not have to be available for a particular shift. If an individual is available for work on the same basis on which the individual's wage credits were earned and if after considering the restrictions as to hours of work, etc., imposed by the individual there exists a reasonable expectation of securing employment, then the individual meets the requirement of being available for work.

The claimant has demonstrated that there exists a reasonable expectation of securing third shift employment in her area. She is able and available for work as required to be eligible for unemployment insurance benefits.

The underlying question in this case is whether there was a disqualifying separation from employment. An employee of a temporary employment firm who has been given proper notice of the requirement can be deemed to have voluntarily quit her employment with the employer if she fails to contact the employer within three business days of the ending of the assignment in order to notify the employer of the ending of the assignment and to seek reassignment. Iowa Code § 96.5-1-j. The intent of the statute is to avoid situations where a temporary assignment has ended and the claimant is unemployed, but the employer is unaware that the claimant is not working could have been offered an available new assignment to avoid any liability for unemployment insurance benefits.

Where a temporary employment assignment has ended by the completion of the assignment of and the employer is aware of the ending of that assignment, the employer is already on "notice" that the assignment is ended and the claimant is available for a new assignment; where the claimant knows that the employer is aware of the ending of the assignment, she has good cause for not separately "notifying" the employer. Rule 871 IAC 24.26(19).

Here, the employer was aware that the business client had ended the assignment; it considered the claimant's assignment to have been completed. Further, she not only asked for additional work on the day the assignment ended, she again asked for work on June 10, which was the third business day after the ending of the assignment. She has satisfied the requirement to make herself available for reassignment upon the ending of the assignment in question.

The claimant is not required by the statute to remain in regular periodic contact with the employer in order to remain "able and available" for work for purposes of unemployment insurance benefit eligibility. Regardless of whether the claimant continued to seek a new assignment, the separation itself is deemed to be completion of temporary assignment and not

a voluntary leaving; a refusal of an offer of a new assignment would be a separate potentially disqualifying issue. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's June 26, 2015 decision (reference 01) is modified with no effect on the parties. The claimant is able and available for work. Her separation was not a voluntary quit but was the completion of a temporary assignment. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css