

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARYANN KITNER**  
Claimant

**APPEAL NO. 13A-UI-07012-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KELLY SERVICES INC**  
Employer

**OC: 05/12/13**  
**Claimant: Appellant (2-R)**

Section 96.5-1-j – Voluntary Leaving – Temporary Employer

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated May 30, 2013, reference 01, which denied unemployment insurance benefits finding that the claimant voluntarily quit employment when she failed to notify the temporary employment firm within three working days of the completion of her last work assignment. After due notice, a telephone hearing was held on July 15, 2013. Claimant participated. The employer participated by Ms. Marcy Porterfield, Recruiter/Kraft Food Assignments.

**ISSUE:**

The issue is whether the claimant voluntarily left employment by failing to contact the temporary employer within three working days of the end of her last working assignment.

**FINDINGS OF FACT:**

MaryAnn Kitner began employment with Kelly Services, Inc. on March 25, 2009. The claimant was assigned to work at Kraft Foods as a production worker. In the fall of 2012, Ms. Kitner was off work for medical reasons for an extended period of time and subsequently was again off work for back surgery beginning on March 11, 2013. The claimant's absence from work was approved by both her employer, Kelly Services, Inc. and the client employer.

On or about May 3, 2013, Ms. Kitner contacted Kraft Foods directly and provided a full release to return to work. It appears at that time Ms. Kitner, however, indicated her personal belief that some work limitations might be helpful to her. Kraft Foods thereafter made a decision based upon the claimant's previous employment record not to allow the claimant to return to her job.

On May 6, 2013, Ms. Kitner was contacted by Kelly Services, Inc. and informed that Kraft Foods would not allow her to return to her previous assignment. Ms. Kitner expressed her dissatisfaction and her wish to be re-employed in a temporary capacity. Kelly Services again contacted Ms. Kitner two days later requesting the claimant to return Kraft Food equipment. At that time however, Ms. Kitner disconnected on the Kelly Services representative.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that the claimant voluntarily left employment with good cause attributable to the employer.

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 purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of each temporary assignment so they may be re-assigned and to continue working. In this case the employer had notice of the claimant's availability because they notified her of the end of the assignment and were aware that Ms. Kitner was available and wanted to continue to be employed through Kelly Services. The claimant, therefore, met the requirement that the temporary service was aware that she was available for assignments.

The administrative law judge, however, concludes that there may be an issue with respect to the claimant's ability to work because the claimant stated by the end of May 2013 her left knee was preventing her from working or standing for extended periods. The issue of whether the claimant is able and available for work is therefore, remanded to the Claims Division for investigation and determination.

**DECISION:**

The representative's decision dated May 30, 2013, reference 01, is reversed. Claimant's separation was attributable to the employer. Claimant had adequate contact with the employer about her availability as required by the statute. Benefits are allowed, provided the claimant is otherwise eligible. The issue of whether the claimant is able and available for work is remanded to the Claims Division for investigation and determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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