

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTINA R WALKUP
Claimant

APPEAL NO. 11A-UI-08597-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES INC
Employer

**OC: 01/30/11
Claimant: Respondent (1)**

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Kristina Walkup filed a timely appeal from the June 21, 2011, reference 03 decision that denied benefits based on an Agency conclusion that she had voluntarily quit employment with Kelly Services on May 20, 2011 without good cause attributable to that employer. After due notice was issued, a hearing was held on July 21, 2011. Ms. Walkup participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate.

ISSUE:

Whether Ms. Walkup separated from the employment at Kelly Services, Inc., for a reason that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Kristina Walkup established a claim for unemployment insurance benefits that was effective January 30, 2011. On April 18, 2011, Ms. Walkup commenced a full-time, entry-level temporary work assignment through temporary employment agency Kelly Services, Inc. Ms. Walkup has a doctorate degree, but accepted an entry-level full-time temporary lab tech position at Pioneer Hybrid in the hope that she would make job contacts that might lead to better, permanent employment. On May 18 2011, Ms. Walkup voluntarily quit the assignment at Pioneer Hybrid before she had completed the assignment. Ms. Walkup quit the full-time temporary assignment so that she could focus on her search for permanent employment. Ms. Walkup had not accepted a new position at the time she separated from the employment at Kelly Services.

In March 2011, Ms. Walkup participated in an orientation class at the Des Moines Workforce Development Center. As part of that class, a Workforce representative told those present that if they started work with a temporary employment agency and found the assignment not a good fit, or that it would not lead to acceptable permanent employment, that they could leave the assignment within a month of starting without consequence to their unemployment insurance benefit eligibility. Ms. Walkup relied upon this information when she decided to accept a temporary position for which she was overqualified. Before Ms. Walkup quit the position at

Pioneer Hybrid, the claimant contacted the Des Moines Workforce Development Center to confirm her previous understanding that if she left the full-time temporary employment assignment, it would have no impact on her benefit eligibility. Ms. Walkup spoke with a Workforce Development representative who confirmed that understanding.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1 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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

The evidence in the record indicates that Ms. Walkup voluntarily quit full-time employment with Kelly Services on May 18, 2011, for personal reasons and not for good cause attributable to the employer. Kelly Services will not be charged for benefits paid to the claimant. Ms. Walkup voluntarily quit solely because she wanted to spend more time on her search for better, permanent employment and quit before she had accepted new employment. *Under the law*, Ms. Walkup's voluntary quit from the full-time employment with Kelly Services disqualifies her for unemployment insurance benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The Workforce Development representative entered the June 21, 2011, reference 03 decision recognized this and entered the decision *supported by the law*.

Any ad hoc "policy" established or promoted by an Agency representative that runs counter to the established, duly-enacted law cannot pretend to trump or set aside that law. The administrative law judge has no difficulty appreciating Ms. Walkup's frustration with having relied upon information provided by a Workforce Development representative as part of her decision-making process only to find that that information ran contrary to the law. However, the administrative law judge must only enter a decision supported by law and is prohibited by duty and professional ethics from entering a decision that runs contrary to the law. Upon reviewing the established statutory and administrative agency rules, the administrative law judge can find no lawful basis for the policy announced at the March 2011 orientation and confirmed in May 2011. The administrative law judge cannot enter a decision allowing benefits in connection with the separation from the full-time employment based on that unsupported policy.

DECISION:

The Agency representative's June 21, 2011, reference 03, decision is affirmed. The claimant voluntarily quit the full-time employment without good cause attributable to the employer. Effective May 20, 2011, the claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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