

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAREN M SPERRY
Claimant

APPEAL NO: 09A-UI-06534-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES
Employer

OC: 11/30/08

Claimant: Appellant (2)

Section 96.5-1 – Voluntary Leaving
Section 96.7-2-a(2) – Charges Against Employer's Account

STATEMENT OF THE CASE:

Karen M. Sperry (claimant)) appealed a representative's April 23, 2009 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Temp Associates (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 22, 2009. The claimant participated in the hearing. Jan Windsor appeared on the employer's behalf. 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:

Did the claimant voluntarily quit for a good cause attributable to the employer? Is the employer's account subject to charge?

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant applied for work with the employer on August 5, 2008, but her first and to date only assignment with the employer did not begin until March 10, 2009. Her last day on the assignment was April 6, 2009. She worked full time as a quality control person at the employer's Burlington, Iowa industrial business client on a 6:30 a.m. to 5:00 p.m., Monday through Thursday schedule. The assignment ended because the claimant quit the assignment.

When the claimant applied for work with the employer she had listed either office work or quality control work, as she had over 20 years of experience in a factory setting. However, when she interviewed with the employer's representative, she expressed a primary interest in clerical work due to a medical condition she suffered, lupus, which could become aggravated from excessive standing.

The employer discussed the assignment with the claimant in early March, and on March 4 the claimant met with the business client's representatives. She expressed to them a concern about being on her feet for ten hours per day, and the representatives indicated that the position

would probably be about 50 percent sitting. As a consequence, the claimant accepted the position, and with the understanding that the position was 50 percent sitting, indicated on March 6 that she could do the functions of the job.

It quickly became apparent after the claimant began working, she was spending virtually all of her time standing, and she began to suffer resulting health complications. On April 3 the claimant was not scheduled to work, but communicated with the business client's representatives that she could not continue working on the assignment if it was going to involve so much standing. The business client's representatives indicated that they would try to work something out, and believed that they had come up with a solution. However, when the claimant came back to work on April 6, the solution did not work out, and the claimant was still standing virtually the full shift. As a result, on April 7 she informed the employer she was quitting the assignment.

The claimant established an unemployment insurance benefit year effective November 30, 2008. She filed an additional claim effective April 5, 2009.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. Leaving because the type of work was misrepresented is good cause for quitting. 871 IAC 24.26(23).

"Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). While the employer or the business client may have had a good business reason for providing the claimant the work as described, it is still a good reason for the claimant to quit. Benefits are allowed.

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code § 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code § 96.19-3. The claimant's base period began July 1, 2007 and ended June 30, 2008. The employer did not employ the claimant during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

DECISION:

The representative's April 23, 2009 decision (reference 01) is reversed. The claimant voluntarily quit for good cause attributable to the employer. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible. The employer's account is not subject to charge in the current benefit year.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs