

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CASSANDRA MINES

Claimant

APPEAL NO. 11A-UI-07237-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES INC

Employer

OC: 05-01-11

Claimant: Appellant (4)

Section 96.5(1) – Voluntary Leaving
871 IAC 24.26(19 & 22) – Voluntary Leaving
Section 96.5-1-j – Reassignment from Employer
Section 96.4-3 – Able and Available for Work

STATEMENT OF CASE:

The claimant filed a timely appeal from the May 24, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 27, 2011. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUE:

The issue is whether the claimant voluntarily left her employment, whether she sought reassignment from the employer, and whether she is able and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time administrative assistant for Kelly Services last assigned at Wagner Electrical, which was subcontracting with Alliant Energy from January 2010 to April 23, 2010. Nancy Olson, Kelly Services manager, notified the claimant the assignment was ending April 23, 2010, due to a lack of work, and the claimant inquired about further assignments at that time but was told the employer did not have anything available for her. The claimant continued to contact the employer, but no assignments were available. As a result of not having any work, the claimant decided to move from Holmen, Wisconsin, to Forest City, Iowa, in July 2010, because she found more affordable housing and the cost of living was less. She checked in with the Mason City, Iowa, Kelly Services office and has maintained contact with that office but has never been contacted for an assignment.

After not being able to find work for such a long period of time, the claimant opened her own business June 21, 2011. Her store is open 9:00 a.m. to 5:00 p.m. Monday through Friday.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation was not disqualifying.

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.

871 IAC 24.26(19) and (22) provide:

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.

(22) The claimant was hired for a specific period of time and completed the contract of hire by working until this specific period of time had lapsed. 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 employees shall be considered to have voluntarily quit employment.

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.

Inasmuch as the claimant completed the contract of hire with employer and sought reassignment from the employer, no disqualification is imposed until the week ending June 25, 2011.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The claimant is devoting herself full-time to starting her own business. That effectively removes her from the labor market the week ending June 25, 2011, and she is no longer able and available for other work at this time. She is disqualified from receiving benefits effective the week ending July 2, 2011.

DECISION:

The May 24, 2011, reference 01, decision is modified in favor of the claimant. The claimant's separation from employment was for no disqualifying reason; however, she is no longer able and available for work effective the week ending July 2, 2011. Benefits are allowed through the week ending June 25, 2011, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw