

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LAURA M WHITAKER**  
Claimant

**APPEAL NO. 10A-UI-15112-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AVENTURE STAFFING  
& PROFESSIONAL SERVICES LLC**  
Employer

**OC: 09/26/10  
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit  
Section 96.5-1-J – Separation from Temporary Employment

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated November 2, 2010, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 14, 2010. The claimant participated. Gayle Boerhm was a witness for the claimant by subpoena. The employer participated by Nichole Postello, human resources assistant, and Deb Upah, branch manager—Grinnell branch. The record consists of the testimony of Laura Whitaker; the testimony of Gayle Boerhm; the testimony of Deb Upah; Claimant's Exhibits A through F; and Employer's Exhibit 1.

**ISSUE:**

Whether the claimant voluntarily left for good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a temporary employment agency. The claimant began accepting assignments from the employer in November 2009. Her last assignment was with A-1 Fiberglass in Montezuma, Iowa. The claimant's assignment ended on September 27, 2010. The claimant was notified by telephone at 5:27 p.m. that her assignment had ended and that she did not need to report to work the next day.

On September 29, 2010, the claimant went to the employer's offices. She first spoke with Laura Boerhm and then with Deb Upah. Ms. Boerhm asked the claimant if she was still looking for work and the claimant said she was. She had just come from an interview with an individual named Rebecca Petig, who was an assistant county attorney. The claimant asked Ms. Boerhm if there were any computer tutorials she could take to brush up on her Microsoft Office skills. The employer was going to be testing candidates for Ms. Petig and the claimant's request was interpreted by the employer as asking for the actual test as opposed to a tutorial. The claimant also contacted the employer on October 1, 2010; October 8, 2010; and November 1, 2010, requesting an assignment.

**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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

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 dispute in this case is whether the claimant requested reassignment from the employer within three days after her assignment ended on September 27, 2010. The claimant testified that she told Ms. Boerhm that she was looking for work. Both Ms. Boerhm and the claimant confirm that she was in the office that day. Ms. Upah likewise agrees that the claimant was in the office. Where the parties differ is on what exactly the claimant said when she was in the office. Ms. Boerhm recalls asking the claimant was she was "up to" and Ms. Upah testified that the claimant never asked for another assignment.

The administrative law judge has carefully considered the testimony in this case and has concluded that the claimant did request another assignment within three days of the end of her previous assignment. The employer clearly knew the claimant was looking for work, as she had come into the office and reported on a job interview she had just had. The claimant credibly testified that she asked if there was a tutorial she could take to brush up her Microsoft Office skills. Somehow the employer came to the conclusion that she was asking to take the test that would be given to candidates for a job where she had just interviewed. The greater weight of the evidence is that the employer knew the claimant's assignment had ended and that the claimant was looking for another job. The claimant also testified that she made requests for assignments on October 1, 2010, and October 8, 2010. The claimant complied with the employer's policies concerning reassignment. She did not voluntarily quit her job. Benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated November 2, 2010, reference 01, is reversed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/kjw