

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NANCY K THOMPSON
Claimant

APPEAL NO. 11A-UI-05603-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES INC
Employer

**OC: 03/27/11
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated April 22, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 19, 2011. Claimant participated. Employer participated by Chad Nyhus, staffing supervisor. The record consists of the testimony of Nancy Thompson; the testimony of Chad Nyhus; 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 staffing agency. The claimant accepted her first assignment from the employer on November 19, 2007. When the claimant applied for temporary assignments, she informed the employer that she could only accept assignments in Osage, Iowa. The claimant was assigned to work at a company called Wallaces, which is a paper factory located in Osage, Iowa.

The initial assignment ended on March 19, 2009 and the claimant did not request a new assignment. She was informed that she would be called if there was an opening. The claimant's second assignment at Wallaces started on April 7, 2009, and ended on June 16, 2009. The claimant did not request a new assignment and assumed she would be called by the employer. She had a third assignment that started on August 24, 2009, and ended on March 30, 2010. The claimant did not request a new assignment.

The claimant signed a form on November 13, 2007, which stated she would notify her Kelly Services supervisor within three working days of the completion of an assignment. (Exhibit 1) The claimant does not recall signing this form.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

Iowa Code § 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.

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.

Although the claimant did sign a form indicating that she would contact the employer within three working days of completing an assignment or be considered a voluntary quit, the employer never imposed that requirement on the claimant. The claimant testified that she informed the employer that she would only accept jobs in Osage. The claimant had a total of three assignments from the employer, which were all at the same factory in Osage. At the end of the two prior assignments, the claimant was told to wait for a call when a job opened up again. The claimant followed the same practice when the assignment ended on March 30, 2010.

Given the way the two previous assignments ended, it is understandable why the claimant did not call the employer and request another assignment. The claimant could reasonably believe that the employer would call her back when a job opened up in Osage. The employer, in effect, waived the requirement that the claimant must request another assignment within three working days or be considered a voluntary quit. The employer knew the claimant wanted another assignment and was waiting to be called back to work. Under these circumstances, the claimant cannot be considered a voluntary quit. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated April 22, 2011, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs