

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CYNTHIA H KENDALL
Claimant

APPEAL NO. 09A-UI-18246-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

INTELISTAF HEALTHCARE INC
Employer

**Original Claim: 10/18/09
Claimant: Appellant (2)**

Iowa Code Section 96.5(1)(j) – Separation From Temporary Employment
Iowa Code Section 96.5(3) – Refusal of Suitable Work

STATEMENT OF THE CASE:

Cynthia Kendall filed a timely appeal from the December 2, 2009, reference 03, decision that denied benefits based on an Agency conclusion that she had voluntarily quit the employment without good cause attributable to the employer. After due notice was issued, a hearing was held on January 13, 2010. Ms. Kendall participated. Tom Kuiper of TALX represented the employer and presented additional testimony through Lisa Han, Office Manager. The parties waived formal notice on the issue of whether the claimant has refused an offer of suitable work.

ISSUES:

Whether the claimant's separation from the temporary employment agency was for good cause attributable to the employer.

Whether the claimant refused an offer of suitable work without good cause.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a staffing agency that provides medical staff to client facilities on a per diem basis. Medical Staffing Network and Intelistaf Healthcare, Inc., merged in 2007, and for purposes of this matter are the same employer.

Cynthia Kendall started working for the employer in September 2008. Ms. Kendall completed a one-day assignment on September 27, 2009.

Though the employer is a temporary employment agency, the employer did not have Ms. Kendall execute the sort of end-of-assignment notice agreement called for under Iowa Code section 96.5(1)(j). Instead, the employer had a policy that required Ms. Kendall to be in contact with the employer every three days to discuss work the employer has available and the employee's work availability.

After Ms. Kendall completed the assignment on September 27, 2009, the next contact the employer had with Ms. Kendall was on October 5, 2009. On that day, Kirsten Johnson, Staffing Coordinator, contacted Ms. Kendall on short notice to work a one-day assignment in Indianola. The assignment was to start at 2:00 p.m. Ms. Kendall was 40 minutes from home. To appear for the assignment, Ms. Kendall would need to travel home, change, and then drive from her home in Lovilla, Iowa, to Indianola. Ms. Kendall could not do all that and appear for the proposed assignment on time. Ms. Kendall told Ms. Johnson this and Ms. Johnson indicated she would look for someone else to fulfill the assignment. Ms. Kendall agreed to check back. Ms. Kendall spoke with Ms. Johnson shortly thereafter and Ms. Johnson had found someone else to work the assignment.

The employer next contacted Ms. Kendall to work on October 8, 2009. Ms. Kendall accepted and completed a one-day assignment that day.

On October 9, 2009, the employer told Ms. Kendall she would need to have a new tuberculosis test before she could be placed in any more assignments. Ms. Kendall's most recent tuberculosis test was good only through October 12, 2009. The employer had no further discussion with Ms. Kendall regarding proposed assignments. After the discussion about the required TB test, the employer had no further discussion with Ms. Kendall regarding proposed assignments. Ms. Kendall did not provide the employer with proof that she had undergone new TB testing.

Ms. Kendall established a claim for unemployment insurance benefits that was effective October 18, 2009. Prior to that date, Ms. Kendall did not have an active claim for benefits.

REASONING AND CONCLUSIONS OF LAW:

A claimant who refuses an offer of suitable work without good cause is disqualified for unemployment insurance benefits until she earns ten times her weekly benefit amount from insured work. See Iowa Code 96.5(3). The offer of employment and the refusal must both occur at a time when the claimant has an active claim for benefits to give rise to a disqualifying refusal. See 871 IAC 24.24(8).

The work refusal regarding the October 5, 2009 shift in Indianola occurred prior to the effective date of Ms. Kendall's claim and would not constitute a disqualifying work refusal. In addition, the weight of the evidence indicates that Ms. Kendall had good cause to refuse the assignment because the employer had provided her with too little notice to allow her to arrive at the assignment at the scheduled start of the shift. Ms. Kendall was willing to arrive late, but the employer elected to find someone else to fulfill the shift. There was no disqualifying work refusal.

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 employer did not have an end-of-assignment notice policy that complied with the requirements of Iowa Code section 96.5(1)(j). The statute requires a policy that says the employee must contact the employer within three working days of the end of assignment. Ms. Han testified the employer had no such policy. Instead, the employer had a policy that required employees to make contact with the temporary employment agency every three days, period. Such a policy does not comply with the language or intent of the applicable statute. The employer would also need to have Ms. Kendall sign off on a policy statement that complied with the statute, which would include having the policy set forth by itself on a separate document and

not set forth as part of a document containing multiple work rules. Finally, the employer would have to provide Ms. Kendall with a copy of the complying policy statement. The employer did not comply with the requirements of the statute applicable to temporary employment agencies and, therefore, is not entitled to claim the benefit of the statute. Instead, the above administrative rule relieved Ms. Kendall of any obligation to seek further assignments with the employer upon completion of each one-day assignment. Ms. Kendall completed the one-day assignment on September 27 and the one-day assignment on October 8, 2009. Ms. Kendall was under no obligation thereafter to maintain contact with the employer or seek further assignments through the employer.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Kendall's separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Effective October 18, 2009, Ms. Kendall is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Kendall.

DECISION:

The Agency representative's December 2, 2009, reference 03, decision is reversed. There was no disqualifying work refusal. The claimant's separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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