

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

THOMAS S WIKEL

Claimant

APPEAL 18A-UI-05290-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES USA LLC

Employer

OC: 04/15/18

Claimant: Appellant (1)

Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment

STATEMENT OF THE CASE:

Thomas S. Wikel (claimant) filed an appeal from the May 1, 2018, reference 01, unemployment insurance decision that denied benefits based upon the determination he voluntarily quit employment with Kelly Services USA, LLC (employer) when he failed to contact it within three days of the end of his assignment to seek additional employment. The parties were properly notified about the hearing. A telephone hearing was held on May 25, 2018. The claimant participated. The employer participated through Supervisor Julie Countryman. No exhibits were offered into the record.

ISSUE:

Did the claimant quit by not reporting for additional work assignments within three business days of the end of the last assignment?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a temporary full-time Material Handler for the employer's client Oscar Mayer beginning on August 28, 2017, and his last day worked was October 3, 2017. The claimant discontinued reporting for his assignment as he felt he was medically incapable of performing the work. A doctor did not advise him to quit and he did not file a Workers' Compensation claim.

The employer has a policy stating employees have three days after the end of an assignment to contact it and request additional work or they will be deemed to have voluntarily quit. The claimant contacted the employer on October 10 notifying it that his assignment had ended. He then requested a job that was not physical in nature, but was told nothing was available.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer. Benefits are denied.

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. (1) 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.

(2) 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.

(3) For the purposes of this lettered paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(b) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

The decision in this case rests, at least in part, upon the credibility of the parties. The employer did not present a witness with direct knowledge of the separation. No request to continue the hearing was made and no written statement of the individual was offered. As the claimant presented direct, first-hand testimony while the employer relied upon second-hand reports, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer.

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of each temporary assignment so they may be reassigned and continue working. The plain language of the statute allows benefits for a claimant "who notifies the temporary employment firm of completion of an assignment *and* who seeks reassignment." (Emphasis supplied.) In this case, the claimant did not notify the employer of the end of the assignment, his availability, or request another assignment within

three days as described in the employer's reporting policy. Therefore, he is deemed to have voluntarily quit the employment without good cause attributable to the employer.

DECISION:

The May 1, 2018, reference 01, unemployment insurance decision is affirmed. The claimant's separation was not attributable to the employer. Benefits are withheld until such time as he works in and has been paid for wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn