

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICHOEL A NICHOLS
Claimant

APPEAL NO. 10A-UI-04729-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROBERT HALF CORPORATION
Employer

**Original Claim: 02/21/10
Claimant: Respondent (1-R)**

Section 96.5-1 – Voluntary Quit
Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated March 17, 2010, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 10, 2010. The claimant participated. The employer participated by Kelly Sams, division director. The record consists of the testimony of Kelly Sams; the testimony of Nichoel Nichols; and Employer's Exhibits 1 and 2.

ISSUE:

Whether the claimant was separated from her employment for any disqualifying reason.

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. On September 1, 2009, the claimant was given an assignment at Wells Fargo as a loss mitigation specialist. Her last day of work was February 19, 2010.

The claimant injured her hand on February 20, 2010. This was a non-work-related injury. She was scheduled to work on February 22, 2010. Prior to the start of her shift, she called Jessica, who was with the employer, and her supervisor at Wells Fargo, Brian Waterhouse, to report that she had injured her hand and had a doctor's excuse not to work. Neither individual answered their phone. A voice mail message was left for both of them. The claimant called back an hour later and still was not able to reach either of them. On February 23, 2010, Jessica called to say that the claimant's assignment had ended because she had not called in to report her absence. The claimant told her that she did call in, but Jessica said there was nothing she could do. The claimant was not eligible for another assignment with the employer.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be determined is the character of the claimant's separation of employment. The evidence established that the claimant did not resign or quit her position. She was unable to come to work on February 22, 2010, due to a hand injury. She testified that she reported her absence both to Jessica, who was with the employer, and her supervisor at Wells Fargo. There was no testimony that the claimant indicated to anyone that she was quitting her job.

The greater weight of the evidence is that Wells Fargo ended the claimant's assignment, although the reasons for ending her assignment are not known. Ms. Sams, who was the employer's representative, had no direct knowledge on why the assignment ended, other than the claimant's failure to come to work and report her absence. The claimant testified that she did inform her employer that she was unable to work because of her hand injury. That testimony is accepted. There is no showing of misconduct that would disqualify the claimant from receiving unemployment insurance benefits. Benefits are allowed if the claimant is otherwise eligible.

Since there was testimony that the claimant missed work due to a hand injury, it may be that the claimant was not able and available for work, given that her original claim was filed on February 21, 2010. This issue was not properly before the administrative law judge in this case. Accordingly, this case is remanded to the claims section for consideration of the able and available issue.

DECISION:

The representative's decision dated March 17, 2010, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible. This matter is remanded to the claims section for consideration of the able and available issue.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw