

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEONA D BLYTHE
Claimant

APPEAL NO. 11A-UI-11989-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

**OC: 07/10/11
Claimant: Appellant (4-R)**

Section 96.5(1)(a) – Voluntary Quit to Accept Other Employment

STATEMENT OF THE CASE:

Leona Blythe filed a timely appeal from the September 6, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 5, 2011. Ms. Blythe participated. Sarah Fiedler represented the employer.

ISSUE:

Whether Ms. Blythe separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency. Leona Blythe was employed by Team Staffing and placed in a part-time, on-call temporary assignment at Alaniz Metrogroup in Mount Pleasant on July 19, 2011. Ms. Blythe was absent from work on July 27 and 28 and next performed work in the assignment on July 31. Ms. Blythe went to the doctor on August 1 and provided the employer with a medical release on August 2. Ms. Blythe then did not perform any work in the assignment until August 15, 2011. Ms. Blythe worked for four hours and then went home. Ms. Blythe did not feel she could do the lifting associated with the assignment. Ms. Blythe had not provided documentation of any lifting restrictions, but the employer did not expect her to lift any more than 40 pounds. Most of the lifting associated with the assignment was much less than 40 pounds. The employer continued to have work available for Ms. Blythe in the assignment. Ms. Blythe did not report for work on August 16 or 17 and did not contact the employer to indicate she would be absent those days. On August 18, the employer contacted Ms. Blythe at 2:40 p.m. to tell her that she needed to report for work at 3:00 p.m. At that time, Ms. Blythe asserted that the supervisor at Alaniz Metrogroup had sent her home on August 15. Ms. Blythe told the employer she was at a mandatory class at Workforce Development in Burlington and could not get to Mount Pleasant in time to report for the assignment. Ms. Blythe also indicated that she had accepted a job with another temp agency and was set to start that job the next week. The new job with the different temp agency was at Alaniz Metrogroup. Ms. Blythe did perform work for the new employer and continues to perform work for the new employer at this time.

REASONING AND CONCLUSIONS OF LAW:

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)(a) provides as follows:

Causes for disqualification.

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:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, *and the individual performed services in the new employment*. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

[Emphasis added.]

The administrative law judge must follow the plain language of the statute.

Both parties presented evidence that was lacking in completeness. The weight of the evidence establishes that Ms. Blythe voluntarily quit the part-time, on-call employment with Team Staffing on August 18, 2011. The weight of the evidence indicates that Ms. Blythe voluntarily quit the employment with Team Staffing to accept employment with a new employer. The quit was without good cause attributable to Team Staffing and that employer will not be charged for benefits paid to Ms. Blythe for the period on or after August 18, 2011. Because Ms. Blythe quit the employment with Team Staffing to accept new employment, the quit would not disqualify her for unemployment insurance benefits.

The evidence presents the question of whether Ms. Blythe was able and available for work during the period of July 31, 2011 through August 18, 2011. The able and available issue was not before the administrative law judge. This matter will be remanded to the Claims Division for investigation and adjudication of whether Ms. Blythe was able and available for work during the period of July 31, 2011 to August 18, 2011 and whether she was partially unemployed during that time.

DECISION:

The Agency representative's September 6, 2011, reference 01, decision is modified as follows. The claimant voluntarily quit the part-time, on-call employment without good cause attributable to the employer on August 18, 2011, not July 31, 2011. The employer's account will not be charged for benefits paid to the claimant for the period of August 18, 2011 onward. The

claimant quit the employment to accept new employment and performed work for the new employer. The quit did not disqualify the claimant for benefits.

This matter is remanded to the Claims Division for investigation and adjudication of whether the claimant was able and available for work during the period of July 31, 2011 to August 18, 2011 and whether she was partially unemployed during that time. The remand should also address whether the claimant has been able and available for work since she separated from Team Staffing Solutions.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw