

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NORMA J EPPS

Claimant

APPEAL NO. 11A-UI-08493-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES INC

Employer

OC: 05/15/11

Claimant: Appellant (4-R)

Iowa Code § 96.5(1) – Voluntary Quit
871 IAC 24.27 – Voluntary Quit of Part-time Employment

STATEMENT OF THE CASE:

Norma Epps filed a timely appeal from the June 15, 2011, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on July 20, 2011. Ms. Epps participated. Nancy Voelker, Senior Supervisor, represented the employer.

ISSUE:

Whether Ms. Epps 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. Norma Epps last performed work for the employer in a temporary assignment that was expected to last two days. Ms. Epps started the assignment on May 12, 2011 and completed her shift that day. On the second day, Ms. Epps did not appear for the assignment. Prior to her scheduled start time, Ms. Epps notified Kelly Services that she would not be returning for the second day of the assignment. Ms. Epps told the Kelly Services representative that the work was okay, but that it required her to stand and that she was experiencing swelling in her feet and ankles. Ms. Epps did not ask for any type of accommodation that would allow her to complete the work. Ms. Epps did not provide the employer with any medical documentation to indicate that she could not perform work that required her to stand. A doctor had not recommended that Ms. Epps leave the assignment. At the time Ms. Epps voluntarily quit the assignment, the employer continued to have work for Ms. Epps in the assignment.

During her May 13, 2011 phone call with the Kelly Services employee, Ms. Epps asked for first shift clerical work. Ms. Epps had not previously performed clerical work for the employer. Ms. Epps had also traditionally worked second shift and/or weekends. Ms. Epps later took a test regarding her aptitude for clerical work, but did not do well on that test. The employer directed Ms. Epps to its website for additional self-training on computer work.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-1-d 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:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Workforce Development rule 817 IAC 24.26(6) provides as follows:

Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

Ms. Epps has failed to present sufficient evidence to establish that she had a bonafide health issue that made it necessary for her to leave the employment. A doctor had not recommended that she quit. She had provided no medical documentation to the employer and provided none for the hearing. The evidence establishes that Ms. Epps quit the two-day assignment for personal reasons, but not for good cause attributable to the employer.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times her weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage

credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

The two-day assignment amounted to part-time work. Because Ms. Epps voluntarily quit the assignment without good cause attributable to the employer, she is disqualified for benefits *based on wages earned through Kelly Services* until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged. However, because the quit was from part-time work, Ms. Epps remains eligible for reduced benefits based on base period employment *other than Kelly Services*, provided she meets all other eligibility requirements. This matter will be remanded to the Claims Division for determination of Ms. Epps' eligibility for *reduced* benefits.

DECISION:

The Agency representative's June 15, 2011, reference 02, decision is modified as follows. The claimant voluntarily quit part-time, temporary employment on May 13, 2011 without good cause attributable to the employer. The claimant is disqualified for benefits *based on wages earned through Kelly Services* until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged. The claimant remains eligible for *reduced* benefits based on base period employment *other than Kelly Services*, provided she meets all other eligibility requirements.

This matter is remanded to the Claims Division for determination of the claimant's eligibility for *reduced* benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs