

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLENE F TOMLINSON
Claimant

APPEAL NO. 11A-UI-11257-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AVENTURE STAFFING
Employer

**OC: 07/10/11
Claimant: Appellant (2)**

Section 96.5(1)j – Quit/Temporary

STATEMENT OF THE CASE:

The claimant, Charlene Tomlinson, filed an appeal from a decision dated August 23, 2011, reference 02. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on September 20, 2011. The claimant participated on her own behalf. The employer, Aventure Staffing, participated by Human Resources Assistant Kayle Neufalfen.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Charlene Tomlinson was employed by Aventure beginning March 28, 2011. Her last assignment began July 15, 2011, at Portionables. On August 4, 2011, she reported a work-related injury to the employer and was taken to a doctor by Employee Services Representative Heidi Hickey. The doctor said Ms. Tomlinson had a strain to her left elbow and released her to return to work without restrictions but did tell her that the elbow would continue to hurt.

After the doctor appointment, Ms. Tomlinson told Ms. Hickey she did not want to return to Portionables because the work she did there would make her elbow hurt. She asked if there was any more work available and Ms. Hickey told she would find out and the claimant should call her at the office. The claimant did so and Ms. Hickey said there was a job at another client starting Monday, August 8, 2011 and the claimant agreed to take it. Later, Ms. Tomlinson remembered she had a commitment to take her granddaughter to the airport on Monday, August 8, 2011. She contacted Ms. Hickey and asked if she could start the assignment on Tuesday, August 9, 2011, and was told to call on Tuesday to find out. When the claimant called on Tuesday, August 9, 2011, Ms. Hickey said the position had been filled.

The claimant continues to contact Aventure to request work.

REASONING AND CONCLUSIONS OF LAW:

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.

The record establishes the claimant declined to continue at her work assignment because it would continue to aggravate a work-related injury. This is good cause to discontinue working. Where illness or disease directly connected to the employment makes it impossible for an individual to continue in employment because of a serious danger to health, termination of employment for that reason is involuntary and for good cause attributable to the employer even if the employer is free from all negligence or wrongdoing. *Raffety v. IESC*, 76 N.W.2d 787 (Iowa 1956).

The claimant did notify the temporary agency immediately she wanted another assignment and the employer agreed. She was available to work beginning Tuesday, August 9, 2011, but no work was available to her at that time. Under the provisions of the above Code section the claimant is qualified for benefits, as she had good cause to decline to continue working the assignment at Portionables but did request another assignment immediately.

DECISION:

The representative's decision of August 23, 2011, reference 02, is reversed. Charlene Tomlinson is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw