

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

THEODORE E LAMPKIN
Claimant

KELLY SERVICES INC
Employer

APPEAL 15R-UI-13105-SCT
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 04/05/15
Claimant: Appellant (2-R)

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

STATEMENT OF THE CASE:

Theodore Lampkin (claimant) filed an appeal from the October 1, 2015, (reference 02) unemployment insurance decision that denied benefits based upon the determination he voluntarily quit his employment when he did not report to work or notify Kelly Services, Inc. (employer) that he would not be at work for three consecutive days. The parties were properly notified about the hearing. A telephone hearing was held on December 22, 2015. The claimant participated on his own behalf. The employer participated through Staffing Supervisor Casey Fasselius.

ISSUES:

Did the claimant quit temporary assignment for good cause reasons related to the employment and did he 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 in temporary assignments as a general laborer beginning on May 28, 2014. His most recent assignment began on June 2, 2015 and was for the employer's client Genco Whirlpool in North Liberty. The assignment ended on September 8, 2015 when the claimant quit.

On that day, the claimant was working in the area to which he was assigned. A Genco Whirlpool employee began yelling at the claimant and using profanity. The claimant had previously had similar experiences but when he reported it to the onsite Genco Whirlpool supervisors nothing was done. The claimant contacted the employer to report the situation and spoke with Staffing Supervisor Casey Fasselius who told him that she would contact the client to discuss the situation. The claimant left work without notifying anyone onsite. Fasselius spoke with the client who determined the claimant had abandoned his job and refused his return to work.

Fasselius spoke with the claimant on September 11, 2015 to update him on the situation and the claimant expressed an interest in additional assignments. He was offered a position with another client that involved 12-hour a day schedule that could include weekends. The claimant declined the assignment as the schedule conflicted with his personal life. In October 2015, the employer offered the claimant another assignment which was refused.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant quit the assignment and was separated from the employment for no disqualifying reasons. Benefits are allowed.

Iowa Code § 96.5-1 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.

Iowa Admin. Code r. 871-24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (4) The claimant left due to intolerable or detrimental working conditions.

A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to rule 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

The client created an intolerable work environment for claimant that gave rise to a good cause reason for leaving the work assignment. "The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made." *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990). Inasmuch as an employer can expect professional conduct and language from its employees, the claimant is entitled to a working environment without being the target of abusive, obscene, name-calling. An employee should not have to endure bullying or a public dressing down with abusive language directed at them, either specifically or generally as part of a group, in order to retain employment any more than an employer would tolerate it from an employee.

The next question is whether claimant's separation from the temporary agency employer is disqualifying.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.26(19) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees

who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for and seeking work at the end of the temporary assignment. Since the claimant contacted the employer within three working days of the notification of the end of the assignment, requested reassignment, and there was no comparable work available at that time, benefits are allowed, provided he is otherwise eligible.

DECISION:

The October 1, 2015, (reference 02) unemployment insurance decision is reversed. The claimant's separation from the assignment was not disqualifying and because he had adequate contact with the employer about his availability and requested further work as required by statute, the separation from the employment is also not disqualifying. Benefits are allowed, provided the claimant is otherwise eligible.

REMAND:

During the hearing, an issue of refusal to work was identified. The refusal of work issue from October 2015 delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial fact-finding and determination.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/pjs