

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBORAH L SKOLD
Claimant

APPEAL NO: 09A-UI-07445-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMPRO SERVICES INC
Employer

OC: 03/15/09
Claimant: Respondent (2/R)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Tempo Services, Inc. (employer) appealed a representative's May 13, 2009 decision (reference 02) that concluded Deborah L. Skold (claimant) was qualified to receive benefits and the employer's account was subject to charge because the employer did not have work available for the claimant after she recovered and offered to return to work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 9, 2009. The claimant participated in the hearing. Colleen McGuinty appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer have work available for the claimant when she offered to return to work in early January after her physician released her to work?

FINDINGS OF FACT:

The claimant has worked on and off for the employer. The claimant has worked temporary jobs for the employer. Most recently, the claimant accepted a temp-to-hire job that she began on July 24, 2008. In early November 2008, the claimant suffered her third heart attack and was hospitalized for ten days. The claimant notified the employer about her medical condition and indicated she would not be able to return to work for a while.

The claimant's physician released her to return to work in December. On January 2, 2009, the claimant contacted the employer and offered to return to work. The claimant, however, initially indicated she wanted part-time, not full-time work. The employer offered the claimant a clerical job that was to last two days. The claimant declined this job because it was not long-term or a temp-to-hire position. When the employer offered the claimant another administrative assistant position on January 9; the claimant declined this job because it involved working too many hours. Since January 9, 2009, the employer has offered the claimant a number of other jobs. The claimant has declined the jobs for various reasons. Primarily she declined the jobs offered to her because either she did not feel she was qualified to do the job or it was a temporary job and the claimant wanted a temp-to-hire position.

The claimant established a claim for benefits during the week of March 15, 2009. She has filed claims since March 15.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer. Iowa Code section 96.5-1. A claimant is not disqualified from receiving benefits, if she leaves employment because of an illness, is restricted from working because of the illness and immediately notifies the employer about the necessity of her absence, but then offers to return to work at her regular work after she has recovered and the employer does not have work available for her. Iowa Code section 96.5-1-d.

In this case, the claimant's physician released the claimant to return to work without any work restrictions, but the claimant only offered to return to work part-time, not full-time that she had been working when she had her heart attack. Therefore, she is not eligible to receive benefits under Iowa Code section 96.5-1-d.

Even though the claimant's last job assignment was a temp-to-hire position, she has accepted temporary assignments with the employer. When the claimant offered to return to work, she would only accept a temp-to-hire job. This condition restricts the work the employer could assign her to do even though the employer had jobs the claimant could have worked at for a month or more. Based on the condition that she could only work part time and then restricted the jobs to only temp-to-hire positions, the claimant unduly restricted her availability by limiting the type of work she will accept. The claimant's actions indicate she had no intentions of returning to work for the employer. Based on the evidence presented during the hearing, the claimant voluntarily quit her employment in early January 2009. Therefore, she is not eligible to receive benefits as of March 15, 2009.

Since the claimant has received benefits since March 15, the issue of overpayment is remanded to the Claims Section.

DECISION:

The representative's May 13, 2009 decision (reference 02) is reversed. The claimant is not qualified to receive benefits as of March 15, 2009, because she did not offer to return to work to her regular job after recovering from an illness. The claimant's subsequent refusals of various job offers limited her availability for work to the extent she had no intention of returning to work for the employer and quit. As of March 15, 2009, the claimant is not qualified to receive benefits. The claimant's disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs