

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUANITO RABO

Claimant

APPEAL NO. 10A-EUCU-00070-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES INC

Employer

**Original Claim: 12-27-09
Claimant: Respondent (1)**

Section 96.5(1) – Voluntary Leaving
871 IAC 24.26(19 & 22) – Voluntary Leaving
Section 96.5-1-j – Reassignment from Employer

STATEMENT OF CASE:

The employer filed a timely appeal from the January 29, 2010, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 16, 2010. The claimant participated in the hearing with Attorney Meo Santiago. Technical Recruiter Brad Ekiss participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

ISSUE:

The issues are whether the claimant voluntarily left his employment and whether he sought reassignment from the employer.

FINDINGS OF FACT:

The claimant was employed as a full-time process engineer for Kelly Services assigned at Case New Holland from October 4, 2004 to January 23, 2009. The assignment ended and was completed when the client downsized and told the claimant and the employer his job was over effective January 23, 2009. The employer's policy requires that employees notify the employer of his availability and "maintain regular contact" with the employer (Employer's Exhibit One). That policy is contained on the back page of the application form, rather than on a separate notice of availability form as required by Iowa law (Employer's Exhibit One). The claimant called the employer January 26, 2009; April 20, 2009; in September 2009; and January 20, 2010, and e-mailed it four to five times, stating he was available for work, asking about further assignments and also stating he would be interested if the employer had work for him in Arizona as well.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation was not disqualifying.

Iowa Code section 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.

871 IAC 24.26(19) and (22) provide:

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.

(22) The claimant was hired for a specific period of time and completed the contract of hire by working until this specific period of time had lapsed. 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 employees shall be considered to have voluntarily quit employment.

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 claimant completed his contract of hire with the employer when he was downsized by the client January 23, 2009. He notified the employer of his availability within three working days when he called in January 26, 2009. The employer's policy, although not contained on a separate availability form as required by Iowa law, states that employees need to maintain regular contact with the employer, which is a very vague term, undefined by the employer's policy. Inasmuch as the claimant completed the contract of hire with employer and sought reassignment from the employer, no disqualification is imposed.

DECISION:

The January 29, 2010, reference 01, decision is affirmed. The claimant's separation from employment was for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw