

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 04A-UI-12977-HT
OC: 10/24/04 R: 03
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 - Quit

STATEMENT OF THE CASE:

The employer, Weststaff, filed an appeal from a decision dated November 23, 2004, reference 02. The decision allowed benefits to the claimant, Emily Cain. After due notice was issued, a hearing was held by telephone conference call on December 30, 2004. The claimant participated on her own behalf. The employer participated by Branch Supervisor Vicky Matthias.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Emily Cain was employed by Weststaff from May 10

until September 23, 2004. Her last assignment began on August 11, 2004, at Omega Cabinet, and was a temporary-to-hire position which was to last at least 60 days,.

Ms. Cain was absent from work on the third shift which began September 22, 2004. She notified Weststaff and Omega she would not be in. On September 23, 2004, Human Resources Representative Chase Thornburg at Omega notified Placement Consultant Jim Cole at Weststaff that the claimant was to be removed because of attendance. Mr. Cole notified the claimant by phone that the assignment had ended.

Weststaff's policy is that if it notifies the employee of the end of the assignment, the employee need not call within three days to request another assignment. However, in order to remain "active" and eligible for another assignment, the employee must call in at least once a week to make themselves available. The claimant did not do this because she does not have long distance on her phone and did not have a calling card to use.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not.

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) 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 claimant was removed from her assignment at the request of the client company due to absenteeism. However, she remained an employee of Weststaff until she failed to call in at least once per week to make herself available. Under the provisions of the above Administrative Code section, her decision not to report for further assignment is not a disqualifying separation.

The provisions of Iowa Code chapter 96.5(1)j do not apply as the employer's policy does not require employees to call in within a certain number of days if a Weststaff representative notifies the employee of the end of the assignment.

DECISION:

The representative's decision of November 23, 2004, reference 02, is affirmed. Emily Cain is qualified for benefits, provided she is otherwise eligible.

bgh/b