

**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**

**ORION A BURNETTE  
745½ 1<sup>ST</sup> AVE  
CLINTON IA 52732-7134**

**TEMPS NOW HEARTLAND LLC  
3747 GRAND AVE  
GURNER IL 60031**

**Appeal Number: 06A-UI-01422-RT  
OC: 01-08-06 R: 04  
Claimant: Appellant (5)**

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant, Orion A. Burnette, filed a timely appeal from an unemployment insurance decision dated January 27, 2006, reference 01, denying unemployment insurance benefits to him because he was still employed in his job for the same hours and wages as in his original contract of hire and cannot be considered partially unemployed within the meaning of the law. After due notice was issued, a telephone hearing was held on February 22, 2006, with the claimant participating. Donna Blakly was available to testify for the claimant but not called, because her testimony would have been repetitive and unnecessary. Regina Tellez, Recruiter, participated in the hearing for the employer, Temps Now Heartland LLC. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

#### 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: The employer is a temporary employment agency. The claimant began employment with the employer on November 11, 2005. On December 28, 2005, the claimant was assigned to Johnson Manufacturing. The claimant was still working there when he was arrested and incarcerated for two days. The claimant's incarceration had nothing to do with his employment. When the claimant returned to work on January 4, 2006, he was informed that he had been terminated. The claimant has not worked thereafter. The claimant is not, and has not, since January 4, 2006, received the same employment from the employer that he had received previously. The claimant has placed no physical or training restrictions on his ability to work except for those positions that require special training or schooling. The claimant has placed no time or day or location restrictions on his availability for work except that he can only work in Clinton, Iowa, and just outside of Clinton, Iowa. Although Johnson Manufacturing was in Princeton, Iowa, a significant distance from Clinton, Iowa, the claimant had a ride there but no longer has that ride, and the claimant does not have a driver's license. The claimant is earnestly and actively seeking work by making two in-person job contacts each week. Pursuant to his claim for unemployment insurance benefits filed effective January 8, 2006, the claimant has received no unemployment insurance benefits, being shown as disqualified because he was not able and available for work. The claimant has only filed for four weekly claims from benefit week ending January 14, 2006 to February 4, 2006. Workforce Development records, as of February 22, 2005, show no earnings from the employer in the fourth quarter of 2005.

#### REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal is whether the claimant has been permanently separated from his employment and, if so, whether that separation from employment was a disqualifying event. The claimant has been permanently separated from his employment and his separation was a disqualifying event.

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 24.25(16) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(16) The claimant is deemed to have left if such claimant becomes incarcerated.

The evidence establishes that the employer is a temporary employment agency and the claimant's last assignment was at Johnson Manufacturing, which began on December 28, 2005. The claimant did not satisfactorily complete that assignment. The claimant was incarcerated for two days and then when he returned to that assignment on January 4, 2006, he was terminated. Work remained for the claimant to do had he not been incarcerated. The claimant has not worked thereafter. These facts are confirmed to some extent by Iowa Workforce Development Department records. The testimony of the employer's witness, Regina Tellez, Recruiter, is not credible, because it disagrees with the claimant's credible testimony and disagrees with Iowa Workforce Development records. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily on January 4, 2006, or was deemed to have left his employment voluntarily on that day because he was incarcerated. The issue then becomes whether the claimant left his employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The reason that the claimant left his employment voluntarily, or was deemed to have left his employment voluntarily, was because he was incarcerated for two days. The claimant testified that this incarceration had nothing to do with his employer. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily without good cause attributable to the employer and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until, or unless, he requalifies for such benefits.

The administrative law judge notes that the employer is a temporary employment agency and the claimant was working on an assignment. However, that assignment had not ended and work remained available for the claimant had he not been incarcerated. The claimant has accepted no other assignments from the employer even though some assignments have been offered.

Although the parties did permit the administrative law judge to take evidence on and decide, if necessary, the issue as to whether the claimant is ineligible to receive unemployment insurance benefits because at relevant times, he is and was, not able, available, and earnestly and actively seeking work under Iowa Code section 96.4-3 (because that issue was not set out on the Notice of Appeal), the administrative law judge concludes that it is not now necessary to decide that issue, because the administrative law judge concluded above that the claimant is disqualified to receive unemployment insurance benefits. The administrative law judge also concludes that it is not now necessary to decide the issue as to whether the claimant is still employed at the same hours and wages as in his contract of hire or in his base period and therefore the employer should not be charged for any unemployment insurance benefits to which the claimant is entitled under Iowa Code section 96.7 (2) (a) (2), because as noted above the administrative law judge has concluded the claimant is disqualified to receive unemployment insurance benefits and because of that the employer will not be charged.

#### DECISION:

The representative's decision of January 27, 2006, reference 01, is modified. The claimant, Orion A. Burnette, is not entitled to receive unemployment insurance benefits until, or unless,

he requalifies for such benefits, because he left his employment voluntarily without good cause attributable to the employer when he was incarcerated.

kkf/kjw