

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LONNIE D ROBERTSON
Claimant

APPEAL NO. 11A-UI-06395-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES INC
Employer

OC: 04/03/11
Claimant: Respondent (4-R)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 10, 2011 (reference 01) decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on June 9, 2011. Claimant participated with Lori Jarrett. Employer participated through Lennie Vieser.

ISSUE:

The issue is whether claimant voluntarily left the employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked temporary full-time as a packer at Quality Associates (Quality) and his last day of work at the assignment was on April 11, 2011. He claimed benefits for the week but reported no wages. He notified a supervisor at Quality he was summoned to a trial regarding his children in Davenport on April 12 and 13, 2011. He returned to Quality on April 14 but no work available because Quality changed staffing agencies from Kelly to Debbie's on April 17, 2011. On April 19 Vieser called to ask if he was going to stay with Kelly or go with Debbie's. He said he had filled out paperwork for Debbie's. There was no further contact with Kelly. He did work at least one day for Debbie's assigned at Quality Associates.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment to accept employment elsewhere.

Iowa Code § 96.5-1-a 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:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

871 IAC 24.28(5) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment.

871 IAC 23.43(5) provides:

(5) Sole purpose. The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. No charge shall accrue to the account of the former voluntarily quit employer.

Even though the separation from the assignment was due to a lack of work, the separation from the employment at Kelly was without good cause attributable to the employer and would, standing alone, disqualify the claimant from receiving benefits, the claimant did leave in order to accept other employment and did perform services for the subsequent employer. Accordingly, benefits are allowed and the account of the employer shall not be charged.

DECISION:

The May 10, 2011 (reference 01) decision is modified in favor of the appellant. The claimant was laid off from the assignment but voluntarily left his employment in order to accept other employment. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer (account number 028362) shall not be charged.

REMAND:

The availability for work issue for the one week ending April 16, 2011 and whether claimant is making himself available for work with Debbie's, Kelly, or other potential employers as delineated in the findings of fact is remanded to the Claims Section of Iowa Workforce Development for an initial investigation and determination.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw