

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NANCY K PAXSON**  
Claimant

**APPEAL NO. 07A-UI-02341-JT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEMP ASSOCIATES - MARSHALLTOWN**  
Employer

**OC: 01/28/07 R: 02  
Claimant: Appellant (2)**

871 IAC 24.26(19) – Separation from Temporary Employment Agency  
Iowa Code section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Nancy Paxson filed a timely appeal from the March 5, 2007, reference 01, decision that denied benefits and requested an in-person hearing. After due notice was issued, a hearing was held on April 2, 2007. Ms. Paxson participated. Judy Rebik, Manager, represented the employer. Employer's Exhibit One was received into evidence.

**ISSUE:**

Whether the claimant separated from the temporary employment agency for a reason that would disqualify her for unemployment insurance benefits.

Whether the claimant has been able to work and available for work since establishing her claim for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Nancy Paxson commenced her employment relationship with Temp Associates of Marshalltown on March 24, 2004 and had two temporary employment assignments with the Agency. Ms. Paxson's final assignment was a full-time clerical assignment with Fisher Logistics that ended on October 20, 2006, when she completed the assignment.

On October 16, 2006, Ms. Paxson sent a fax to Temp Associates. Ms. Paxson notified Temp Associates that the assignment at Fisher Logistics would be ending on October 20 and that Fisher Logistics did not intend to renew the contract covering her assignment. In addition, Ms. Paxson stated the following:

I'm asking that I not be placed with another client at this time. My health is becoming a detriment to my work. I'm looking at one more chemo treatment (at the very least) and then radiation (this will be an everyday routine for at least four weeks). I'd rather be working, but feel it's unfair to potential clients to place me with them.

I am hoping that by the end of the year I will be cancer free. The treatments are doing better than hoped for. The lump is all but gone. I may be too optimistic, but I feel I'll be back to my old self by the time the New Year arrives.

Ms. Paxson had been diagnosed with cancer in August 2006 and had notified Temp Associates Manager Judy Rebik of the diagnosis. Though the assignment had been full-time, Ms. Paxson's hours at the assignment were reduced to allow her time to undergo and recover from chemotherapy. Ms. Paxson had commenced chemotherapy on September 11, 2006. Thereafter, Ms. Paxson underwent chemotherapy during the first week of each month. Ms. Paxson was in chemotherapy for a total of four months. During the weeks when Ms. Paxson underwent chemotherapy, the entire week was spent in treatment or recovery from treatment and Ms. Paxson was not able to work. Ms. Paxson felt much better during the weeks in which she was not undergoing chemotherapy. Ms. Paxson commenced radiation treatment on February 17, 2007 and continued to receive daily radiation treatment for 28 days. Ms. Paxson received her radiation treatments in Iowa City and commuted to Iowa City on a daily basis to undergo treatment.

On October 23, 2006, Ms. Paxson went to the Temp Associates office and spoke with Ms. Rebik. Ms. Paxson indicated at that time that she was available to perform work for Fisher Logistics in the event that Fisher Logistics indicated a need for her services. Ms. Paxson indicated that she was also available for short-term assignments of one- to two-day duration.

On January 12, 2007, Ms. Rebik telephoned Ms. Paxson to inquire about Ms. Paxson's health. During the conversation, Ms. Paxson indicated that she was not ready to return to work. Ms. Rebik did not offer any assignments.

On February 12, Ms. Rebik again contacted Ms. Paxson, who again indicated that she was not ready to return to work. Ms. Rebik did not offer any assignments. The employer has not had additional contact with Ms. Paxson outside the unemployment insurance proceedings.

The employer now has a stand-alone policy that requires employees to notify Temp Associates within three days of the end of an assignment. Ms. Paxson's relationship with Temp Associates commenced before the employer began having employees execute the separate notification policy. The employer does not know whether the employer provided Ms. Paxson with a copy of the stand-alone notification policy or had Ms. Paxson execute such an agreement.

Ms. Paxson established a claim for benefits that was effective January 28, 2007. At that time, Ms. Paxson was still undergoing daily radiation treatment and commuting to Iowa City to receive that treatment. Ms. Paxson completed her cancer treatment on February 23, 2007.

#### **REASONING AND CONCLUSIONS OF LAW:**

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.

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.

Though the employer now has a stand-alone notification policy that requires police to contact Temp Associates within three working days of the completion of an assignment, the greater weight of the evidence indicates that the employer did not provide Ms. Paxson with a copy of the stand-alone policy or have her sign off on the stand-alone notification policy. Thus, concerning Ms. Paxson's eligibility for unemployment insurance benefits, the administrative law judge concludes that the employer did not comply with requirements of Iowa Code section 96.5(1)(j) and, therefore, is not entitled to the benefit of the statute. Accordingly,

Ms. Paxson's election not to pursue another temporary employment assignment would not disqualify her from receiving unemployment insurance benefits and that separation should be deemed for good cause attributable to the temporary employment agency.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

The evidence in the record establishes that Ms. Paxson is currently able to work and available for work. This fact was confirmed by the administrative law judge's observation of Ms. Paxson during the in-person hearing. The evidence in the record indicates that prior to February 23, 2007, Ms. Paxson was under the care of a medical practitioner receiving intensive treatment for cancer and was not able and available for work. See 871 IAC 22.23(35). The evidence and record indicates that since February 23, 2007, Ms. Paxson has been able to work and available for work. Accordingly, Ms. Paxson would be eligible for benefits effective February 23, 2007, provided she is otherwise eligible.

#### **DECISION:**

The claims representative's March 5, 2007, reference 01, decision is reversed. The claimant separated from the temporary employment agency for no disqualifying reason and for good cause attributable to the temporary employment agency. Prior to February 23, 2007, the claimant was not able to work and available for work was not eligible for benefits. Effective February 23, 2007, the claimant has been able to work and available work and is eligible for

benefits, provided she was otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw