

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SAY NAONADY**

Claimant

**APPEAL NO. 17A-UI-04497-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KELLY SERVICES USA LLC**

Employer

**OC: 03/26/17**

**Claimant: Respondent (2)**

Iowa Code section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the April 20, 2017, reference 02, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on the claims deputy's conclusion that the claimant was discharged on April 5, 2016 for no disqualifying reason. After due notice was issued, a hearing was held on May 17, 2017. Claimant Say Naonady participated. Robin McCroskey represented the employer. Laos-English interpreters Kim Yang and Obrdar Khudry of CTS Language Link assisted in the hearing. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant, which record reflects that the claimant has not received any unemployment insurance benefits in connection with the original claim that was effective March 26, 2017.

**ISSUE:**

Whether Ms. Neonady separated from the employment for a reason that disqualifies her for unemployment insurance benefits or that relieves the employer of liability for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Kelly Services U.S.A., L.L.C., is a temporary employment agency with a branch office in Des Moines. Say Naonady was employed by Kelly Services and performed work for the employer in a single full-time, temporary work assignment at Iowa Cold Storage in Altoona. Ms. Neonady is an immigrant from Laos and possesses limited English language skills. The work involved packaging meat products. Ms. Neonady resided in Des Moines at all relevant times. At the time Ms. Naonady accepted the assignment, the employer told her that the employment would be full-time, 7:00 a.m. to 3:30 p.m., Monday through Friday, but that the client business would send her home before 3:30 p.m. if the business ran out of product to package. The work paid \$9.50 per hour.

Ms. Neonady began the assignment at 7:00 a.m. on April 5, 2016. Ms. Neonady did not complete the assignment. After Ms. Neonady had worked in the assignment for a couple hours, Iowa Cold Storage sent her home for the day because it had no more work for Ms. Naonady to

perform that day. The Iowa Cold Storage sent Ms. Naonady home with instructions to return to work the following day. Ms. Naonady immediately contacted Kelly Services after being sent home for the day and advised Robin McCroskey, Senior Staffing Supervisor, that she had been sent home due to Iowa Cold Storage running out of product. Ms. Naonady told Ms. McCroskey that she had expected to work longer. Ms. McCroskey reminded Ms. Naonady that the customer business would send her home early if it lacked product to package. Ms. McCroskey asked Ms. Naonady whether she was willing to return to the assignment next day. Ms. Naonady stated she was not willing to return to the assignment. Ms. Naonady asked for a different assignment, but Kelly Services did not have another assignment for her.

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

Iowa Code § 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.

Iowa Admin. Code r. 871-24.25(18) 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:

- (18) The claimant left because of a dislike of the shift worked.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The weight of the evidence establishes a voluntary quit due to dissatisfaction with the work hours. The employer provided notice to Ms. Naonady that the assignment conditions would involve being sent home early when the customer business ran out of work for her perform. Ms. Naonady unreasonably based on decision to leave the assignment on the experience of one day. Ms. Naonady's voluntary quit was without good cause attributable to the employer. Accordingly, Ms. Naonady is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount subsequent to her April 5, 2016 separation from the Kelly Services employment. Ms. Naonady must meet all other eligibility requirements. The employer's account has not been charged and shall not be charged.

**DECISION:**

The April 20, 2017, reference 02, decision is reversed. The claimant voluntarily quit the employment on April 5, 2016 without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in a been paid wages for insured work equal to ten times her weekly benefit amount subsequent to her April 5, 2016 separation from the employment. The claimant must meet all other eligibility requirements. The employer's account has not been charged and shall not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/scn