

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CATHY L BIRDSLEY

Claimant

APPEAL NO. 10A-UI-14755-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CLINTON STAFFING COMPANY

Employer

OC: 11/08/09

Claimant: Appellant (2)

Section 96.5-1-j – Separation From Temporary Employment Services

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated October 25, 2010, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 17, 2010. The claimant participated. The employer participated by Jane Brown, human resources representative. The record consists of the testimony of Cathy Birdsley; the testimony of Jane Brown; Claimant's Exhibits A through J; and Employer's Exhibits 1 through 5.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a temporary employment agency located in Clinton, Iowa. The claimant accepted an assignment to work at a company called PFC. The assignment was a full-time job and the claimant worked in the office.

In July 2010, the claimant notified her employer that she needed to have rotator cuff surgery and would be off work from two to four weeks. The surgery was not work-related or due to a work injury. The claimant's last day of work was August 6, 2010. Her surgery took place on August 9, 2010. On August 17, 2010, the claimant provided a work release that gave the claimant an unrestricted work release to return to work on September 7, 2010. The claimant asked if she would be able to return to work at PFC.

PFC decided to end the claimant's assignment. The claimant asked about other assignments and sent several emails to the employer asking for additional work. One of those emails was sent on September 7, 2010. (Exhibits H and I)

REASONING AND CONCLUSIONS OF LAW:

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

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.

The evidence in this case established that the claimant was able and available to return to work on September 7, 2010, and had notified her employer that she was released to return to work without restriction. The employer's customer, PFC, elected not to bring the claimant back. There was a problem with the work schedule that the claimant had been working and the schedule that the employer now wanted her to work. The claimant was notified about the end of the assignment and she asked for a new assignment on September 7, 2010. She followed up with several additional requests for work from the employer. Although the claimant used email instead of calling, which was the employer's preferred method, the employer clearly knew that the claimant wanted another assignment. The claimant did notify her employer within 72 hours of the end of her assignment that she wanted a new assignment. She did not voluntarily quit. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's decision dated October 25, 2010, reference 01, is reversed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw