

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTINA SWANKS**

Claimant

**APPEAL NO. 08A-UI-10750-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DES STAFFING SERVICES INC**

Employer

**OC: 12-02-07 R: 02  
Claimant: Respondent (2R)**

Iowa Code section 96.5(1j) – Voluntary Leaving (Temporary Assignment)

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the November 4, 2008, reference 06, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 2, 2008. The claimant participated in the hearing. Amy MacGregor, Human Resources Manager and Jessica Holmes, Assistant Division Manager, participated in the hearing on behalf of the employer.

**ISSUES:**

The issues are whether the claimant voluntarily left her employment, whether the claimant completed the assignment, whether the claimant sought reassignment from the employer and whether she is overpaid benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time office worker for DES Staffing. Her only assignment was at Millard Refrigeration where she worked from July 16, 2008 to August 11, 2008. The claimant stopped showing up for her assignment August 12, 2008, but did not notify the employer of her decision. The claimant was in the midst of a nasty divorce and two of her brothers-in-law worked at the plant. She began receiving threatening phone calls at work and suspected they were from her husband and his brothers but did not know for sure but did know she did not feel safe on the assignment any longer even though she reported the situation to her supervisor and he said he would do everything possible to make sure she was separated from her husband's brothers. The evening of August 11, 2008, the claimant, her children and her sister were involved in a high-speed chase with her husband and his brothers and a police report was filed against her husband. The claimant discontinued going to work the following day but did not contact the employer to report she was not returning and the employer did not learn she left until August 18, 2008, when it received her timecard showing 8.40 hours of work performed. The employer maintains its reporting requirements on a separate sheet of paper but the claimant did not notify it she was available for other work or contact it at all after leaving. When employees call in to report the end of an assignment or to make a contact the employer pulls the employee up by name or social security number on the computer and then makes a notation in their file.

The employer does not have any notations in the claimant's file after August 18, 2008, when it recorded her time sheet of 8.40 hours.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer.

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.

While the claimant had good personal reasons for leaving her employment, she voluntarily quit her job without completing the assignment or notifying the employer of her quitting. The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of each temporary assignment so they may be reassigned and continue working. The claimant did not contact the employer after leaving her assignment. Unfortunately, the law does not yet recognize domestic abuse situations as a good cause reason for leaving a job. In this case, the claimant gave the employer no notice of her availability and, therefore, is considered to have quit the employment, even though the claimant had good personal reasons for leaving. Consequently, benefits must be denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

**DECISION:**

The November 4, 2008, reference 06, decision is reversed. The claimant's separation was not attributable to the employer. Benefits are withheld until such time as the claimant works in and has been paid for wages equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of determining the amount of the overpayment and whether the

overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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