

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANET L WINKEMPLECK
Claimant

APPEAL NO. 07A-UI-10127-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

**OC: 09-23-07 R: 04
Claimant: Appellant (2)**

871 IAC 24.26(1) – Voluntary Leaving – Change in Contract of Hire
Iowa Code § 96.5(1) – Voluntary Leaving - Layoff

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 29, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on November 19, 2007. The claimant did participate along with her witnesses, Charlene Freeman. The employer did participate through Brad Reed, Human Resources Assistant.

ISSUE:

Did the claimant voluntarily quit her job with good cause attributable to the employer or was she laid off due to lack of work?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: The claimant was last assigned to work at Metro Group beginning on September 26, 2007 as a general production worker. She reported to work on September 26 and was sent home after working two hours due to lack of work. Henry at Metro group told her that no work would be available for her until possibly the following Monday, October 1, and that she should call in on Monday to find out if work was available. The claimant notified Team Staffing on September 26 that she had been sent home from work and was to call Metro Group on Monday to see if additional work was available. The claimant was told by Team Staffing that no other work was available for her and to wait to see if Metro Group had work available for her on Monday. The claimant called Metro Group on Monday, October 1, but no one ever answered her phone call. She left a message indicating she was available for work and asked that someone call her back. The claimant did not receive any response from anyone at Metro Group on Monday, October 1. She called Team Staffing back on October 1 and told them that she could not get a hold of anyone at Metro Group. A Team Staffing employee told her that she would look into the situation. The claimant did not hear back from anyone at Team Staffing until October 2, when she was called and given another number to call Metro Group at. The claimant called Metro Group on October 2 and was told to come into work but that when she arrived work might not be available for her. The claimant's witness, Charlene Freeman, was

also working at Metro Group through another temporary agency and was also told that no work was available for anyone until October 4, 2007.

There was no work available for the claimant at Metro Group on October 2. The claimant spoke to Melissa at Team Staffing on October 2 and asked for additional hours of work in the form of another assignment, because Metro Group was not providing her with any work hours. The claimant was told that no other work assignments were available for her and that there was no work available at the Metro Group. The claimant quit the Metro Group assignment because she was not being given any hours of work at that location. In the last seven days on the job, from September 26 through October 2, the claimant was only allowed to work for two hours. She explained to Team Staffing that she needed an assignment that would give her more than two hours of work per week. She also explained that she could not afford to use up gasoline to drive out to the Metro Group facility from her home only to be told to go home as no work was available for her. On October 2, the claimant asked Team Staffing to provide her with another assignment and none was available on October 2, 2007.

The claimant is still employed by Team Staffing, as she started a new assignment for them on November 5 at West Liberty Foods.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was laid off due to a lack of work.

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.

The claimant was laid off work at her Metro Group assignment beginning on September 26, 2007 until she voluntarily quit on October 2, 2007. The claimant made herself available for work at both Metro Group and for Team Staffing during this period, but no work was available for her. Therefore, the separation from September 26, 2007 through October 2, 2007 was attributable to a lack of work by the employer. Benefits are allowed.

For the reasons that follow, the administrative law judge concludes the claimant did voluntarily leave the employment on October 2, 2007 with good cause attributable to the employer.

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.

871 IAC 24.26(1) 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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

In general, a substantial pay reduction of 25 to 35 percent or a similar reduction of working hours creates good cause attributable to the employer for a resignation. *Dehmel v. EAB*, 433 N.W.2d 700 (Iowa 1988). Inasmuch as the claimant would suffer a substantial change in her hours of work, the change of the original terms of hire is considered substantial. The claimant was not required to keep working an assignment that was not providing her with any hours of work. It is unreasonable to expect a claimant to drive to an assignment repeatedly only to be told that she is not needed to work. In light of rising gasoline prices, it is unreasonable to expect claimants to use up their gasoline driving to assignments only to be told no work is available. The claimant was clearly not quitting Team Staffing, as she asked for another assignment or additional work hours because she simply was not being given enough hours of work at Metro Group. The claimant is still employed by Team Staffing, as she is currently working on another assignment for them. The administrative law judge concludes that the claimant's separation from Metro Group on October 2, 2007 was with good cause attributable to the employer because of her drastic reduction in hours of work at Metro Group. Benefits are allowed.

DECISION:

The October 29, 2007, reference 01, decision is reversed. The claimant was laid off due to a lack of work from September 26, 2007 through October 2, 2007. The claimant voluntarily left her employment on October 2, 2007 with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw