

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GLORIA D KEIM
Claimant

APPEAL NO. 09-UI-01509-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**R J PERSONNEL INC
TEMP ASSOCIATES**
Employer

**OC: 11/30/08 R: 04
Claimant: Respondent (5)**

Iowa Code Section 96.5(1) – Voluntary Quit from Employment Assignment
Iowa Code Section 96.5(1)(j) – Duty to Seek Reassignment
Iowa Code Section 96.5(1)(g) – Requalification for Benefits
Iowa Code Section 96.5(3)(a) – Refusal of Suitable Work

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 30, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on February 19, 2009. Claimant Gloria Keim participated. Account Manager Holly Jacobi represented the employer. The administrative law judge took official notice of the Agency's administrative record of wages reported for the claimant, the DBRO record concerning the current claim year and of the DBIN record concerning the prior claim year. The parties waived formal notice on the issue of whether Ms. Keim refused offers of suitable employment on July 24, 2008 or August 13, 2008.

ISSUES:

Whether the claimant's voluntary quit from her employment assignment on July 19, 2008 was for good cause attributable to the employer. It was not.

Whether the claimant sought reassignment from the employer.

Whether Ms. Ms. Keim requalified for benefits by earning ten times her weekly benefit amount from insured work after she quit the temporary employment assignment and before she applied for unemployment insurance benefits. She did.

Whether the claimant refused a suitable offer of employment without good cause. The claimant refused two offers of unsuitable employment for good cause and did so at a time when she did not have an active claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Gloria Keim established her employment relationship with R J Personnel, Inc., doing business as Temp Associates, on October 11, 2007. Since that time, Ms. Keim has worked in three

employment assignments. On October 11, 2007, the employer placed Ms. Keim in a long-term, temp-to-hire, full-time production position at Musco Sports Lighting. The assignment involved first-shift, daytime hours. Ms. Keim continued in the assignment until July 19, 2008, when she voluntarily quit the work assignment. Ms. Keim quit the assignment at Musco because she had learned it would take longer than she thought to be hired as a permanent employee at Musco and thereby take longer to obtain family health insurance. Ms. Keim was not aware that she was eligible for health insurance through Temp Associates. On July 11, 2008, Ms. Keim notified Temp Associates Account Manager Mike Thomas that she intended to quit the assignment effective July 19, 2008. Ms. Also notified Mr. Keim at that time that she was interested in additional, full-time, first-shift work assignments. Temp Associates did not have a new assignment for Ms. Keim at that time.

Ms. Keim is mother to a 13-year-old and a 20-year-old, both of whom reside with Ms. Keim. In addition, Ms. Keim is primary caregiver to her mother, who has suffered a stroke. Ms. Keim has arranged for nursing care for her mother during the day when Ms. Keim is at work. Ms. Keim cannot afford evening nursing care for her mother and must personally care for her mother during the evening hours when there is nursing care. Accordingly, Ms. Keim has limited her work availability to first-shift, full-time positions and has worked only in such positions during her employment with Temp Associates.

Ms. Keim's last day in the Musco assignment was Saturday, July 19, 2008. Though Ms. Keim had notified Temp Associates prior to her final day in the Musco assignment that she would be separating from the assignment, Temp Associates still expected Ms. Keim to contact Temp Associates within three working days of the end of the assignment in accordance with the employer's notification policy and to let the employer know she was seeking a new assignment. The employer's notification policy is a stand-alone policy. The employer had Ms. Keim sign her acknowledgment of the policy and provided Ms. Keim with a copy of the policy. Ms. Keim did not contact Temp associates until July 24, which was the fourth working day from the end of her assignment. In the interim, Ms. Keim had been preoccupied with caring for her mother, whose condition was worse than usual. On July 24, Temp Associates Account Manager Angie Timmerman offered Ms. Keim a full-time work assignment at Monsanto. The work would involve a swing shift, meaning that Ms. Keim would work first shift one week, second-shift the next, and third-shift the next. Ms. Keim's family responsibilities prevented her from being available for rotating-shift work. Ms. Timmerman told Ms. Keim the particulars about the proposed assignment. Ms. Keim refused the offered assignment because of the swing shift. Thereafter, Ms. Keim maintained regular contact with Temp Associates.

On August 13, Temp Associates Account Manager Angie Timmerman offered Ms. Keim a full-time, second-shift work assignment at Geneva, a division of Hon. Ms. Timmerman told Ms. Keim the particulars about the proposed assignment. Ms. Keim refused the offered assignment because of the second shift hours.

On August 21, Temp Associates offered Ms. Keim a full-time, first shift position at Hon, which Ms. Keim accepted. Ms. Keim continued in the work assignment until November 12, 2008, when she was completed the assignment and was laid off. It was the layoff from this assignment that prompted Ms. Keim to file the claim for unemployment insurance benefits that was effective November 30, 2008. Ms. Keim had earned \$5,357.35 in gross wages from the assignment at Hon, prior to filing her claim for benefits.

Ms. Keim had established a prior claim for benefits that was effective August 12, 2007. However, Ms. Keim had not received any benefits in connection with the claim and discontinued her request for benefits during the week that ended September 8, 2007. Thus Ms. Keim did not

have an active claim for benefits from July 19, 2008, when she voluntarily quit the work assignment at Musco. Ms. Keim continued to not have an active claim for benefits at the time Temp Associates made the two offers of employment prior to the Hon assignment that Ms. Keim started on August 21.

REASONING AND CONCLUSIONS OF LAW:

The weight of the evidence in the record establishes that Ms. Keim voluntarily quit her work assignment at Musco Sports Light on July 19, 2008, for personal reasons and not for good cause attributable to the employer. The weight of the evidence indicates that Ms. Keim voluntarily quit due to dissatisfaction with the employment insofar as she thought it would take too long to obtain family health insurance.

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.

Iowa Code section 96.5-1-g 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:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The voluntary quit of the assignment disqualified Ms. Keim from receiving unemployment insurance benefits until she had earned ten times her weekly benefit from insured work. Ms. Keim did that prior to filing the claim for benefits that was effective November 30, 2008. In connection with the claim that was effective November 30, 2008, Ms. Keim would be eligible for benefits, provided she is otherwise eligible. The weight of the evidence indicates that Ms. Keim's voluntary quit from the assignment did not sever her relationship with Temp Associates.

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.

The administrative law judge concludes that Iowa Code section 96.5(1)(j) does not apply to this case because Ms. Keim did not "complete" the assignment at Musco Sport Lighting. Instead, she voluntarily quit without good cause attributable to the employer. That voluntary separation without good cause, the associate disqualification, and the associated requalification for benefits has been addressed above. However, if one interprets "complete" simply to mean the last day in the assignment, the weight of the evidence indicates that Ms. Keim complied with the requirements of the statute. Ms. Keim had notified the employer prior to leaving the assignment

that she would be leaving on July 19 and that she was interested in another assignment. In addition, Ms. Keim contacted the employer for a new assignment within four working days of the end of the assignment. Ms. Keim had good cause for exceeding the three-working-day deadline by one day, due to her need to address her mother's acute health situation. Ms. Keim followed up with the employer at her first reasonable opportunity.

A person who refuses an offer of suitable work without good cause is disqualified for benefits until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. Iowa Code section 96.5(3)(a). The need to care for a sick family member constitutes good cause for refusing employment. See 871 IAC 24.24(4). In addition, before a refusal of suitable work will disqualify a claimant for benefits, the evidence must indicate the offer and the refusal both occurred at a time when the claimant had a claim for benefits and during the affected benefit year. See 871 IAC 24.24(8). In this case, the fact that the offered employment was swing shift and second shift made it not suitable, since Ms. Keim had a history of performing first shift employment and continued to be available for first shift employment. In addition, Ms. Keim's responsibility for caring for her sick mother provided good cause for refusing the employment. Finally, the offer and refusals took place before Ms. Keim established her claim for benefits. The work refusals did not disqualify Ms. Keim for benefits.

The administrative law judge concludes that Ms. Keim is eligible for benefits, provided she is otherwise eligible. Because the employment relationship with Temp Associates was never severed and because Ms. Keim went on to perform additional work for the employer prior to establishing her claim for benefits, the administrative law judge concludes that employer's account may be charged for benefits paid to the claimant. See Iowa Code section 96.7(2)(a).

DECISION:

The Agency representative's January 30, 2009, reference 01, decision is modified as follows. The claimant voluntarily quit the employment assignment, but requalified for benefits before establishing her claim for benefits. The claimant sought reassignment from the employer. The claimant refused unsuitable work for good cause at a time when she did not have an active claim for benefits. The claimant is eligible for benefits effective November 30, 2008. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css