

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY A DEMORUELLE
Claimant

APPEAL NO. 10A-UI-11942-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES STAFFING SERVICES INC
Employer

OC: 05/17/09
Claimant: Respondent (1-R)

Section 96.5(1)j – Quit/Temporary

STATEMENT OF THE CASE:

The employer, DES Staffing, filed an appeal from a decision dated August 18, 2010, reference 04. The decision allowed benefits to the claimant, Kimberly Demoruelle. After due notice was issued, a hearing was held by telephone conference call on October 12, 2010. The claimant participated on her own behalf. The employer participated by Recruiter Ashley Leydens and Human Resources Coordinator Stacy Navarro.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Kimberly Demoruelle was employed by DES Staffing from May 12, 2008 until May 18, 2010. Her last assignment was at Finish Binders and ended May 13, 2010. The claimant called the employer that same day to request a new assignment.

The employer attempted to call the claimant on May 14, 17 and 18, 2010, for more work but she could not be reached. She did not have an answering machine, voice mail or caller identification to know any calls had been made.

During the hearing the claimant acknowledged spending time in the hospital for medical reasons during the course of her unemployment claim. This matter should be remanded to determine if she was able and available during the entire period of her claim.

REASONING AND CONCLUSIONS OF LAW:

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.

The employer acknowledges the claimant did call within three days of the end of her last assignment to request more work. DES maintains Ms. Demoruelle quit because she could not be reached for three days but the witnesses could not provide evidence of any specific policy which states an employee will be considered a voluntary quit if they cannot be reached for three days.

Even if such a policy existed the determination of whether a claimant is qualified for benefits is determined by the provisions of Iowa law. The above Code section only requires an employee of a temporary agency to notify the agency within three working days of the end of the assignment and the claimant did do this. Therefore, she is qualified for benefits.

The issue of whether the claimant was able and available during the period of her claim should be remanded for determination.

DECISION:

The representative's decision of August 18, 2010, reference 04, is affirmed. Kimberly Demoruelle is qualified for benefits, provided she is otherwise eligible.

The issue of whether the claimant's health problems and possible hospitalization during her benefit year rendered her not able to work or unavailable for work is remanded to UIS for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css