

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CINDY L MCMAHON
Claimant

APPEAL NO. 09A-UI-07864-E2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMPS NOW HEARLAND LLC
Employer

**Original Claim: 04/05/09
Claimant: Respondent (2)**

871 IAC 24.26(19) – Voluntary Quit Spot or Casual Labor
Section 96.5(1)j – Voluntary Leaving - Temporary Employment

STATEMENT OF THE CASE:

The employer filed an appeal from the May 18 2009, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on June 16, 2009. The claimant did not participate. The employer participated through Shae Munson and was represented by Laura Gawronski.

ISSUE:

The issue is whether the claimant voluntarily quit her work from a temporary employment firm.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant was employed through the employer performing various temporary work from July 2008 through February 24, 2009. The claimant was assigned one day of work on February 24, 2009. The claimant and employer knew the assignment was for one day. The claimant reported back to her employer on March 6, 2009 to pick up her check. The employer deemed the claimant to have voluntarily quit, as she did not call in after her assignment.

The employer has a policy that states that employees are to call in after assignments. This policy is not on a separate document.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not voluntarily quit her employment.

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 purpose of the Iowa Code section 96.5-1-j 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. Before applying the statute, an examination of the facts is required to determine if the employer and the claimant meet the definitions under the statute. The employer to be covered must be a "temporary employment firm." Iowa Code section 96.5-1-j(2). A temporary employment firm is defined as a person engaged in the business of hiring temporary employees. "Temporary employees' are defined as: '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." Iowa Code section 96.5-1-j(1).

The law requires an employee who is covered by this provision of the law, "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.” Iowa Code section 96.5-1-j. The only exhibit offered by the employer did not comply with this section. Exhibit One, Page Three, has a number of work-related policies and requirements beyond an obligation to call. It is not in compliance with the above section of law.

The claimant is properly considered a casual or spot labor worker under 871 IAC 24.26(19)¹. The claimant was assigned to and completed a specific assignment. The claimant had no obligation to report back to the employment agency at the end of the assignment. The claimant is not disqualified for voluntary quit or misconduct.

DECISION:

The May 18, 2009, reference 01, decision is affirmed. The claimant is eligible to receive unemployment insurance benefits, provided the claimant meets all other eligibility requirements.

James Elliott
Administrative Law Judge

Decision Dated and Mailed

jfe/kjw

¹ 871 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.