

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELA M TERRY
Claimant

APPEAL NO. 09A-UI-10194-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES
Employer

**Original Claim: 06/07/09
Claimant: Respondent (2/R)**

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Temp Associates (employer) appealed a representative's July 15, 2009 decision (reference 01) that concluded Angela M. Terry (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 3, 2009. The claimant participated in the hearing. Jenny McNeil appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant began taking assignments with the employer on March 10, 2008. Her final assignment began on December 8, 2008. Her last day on the assignment was January 22, 2009. The assignment ended because the claimant quit the assignment due to deciding to move out of state.

The claimant's final assignment was with the same business client for whom she had periodically worked since September 29, 2008. She worked part-time, usually approximately 9:00 a.m. to 12:00 p.m., Monday through Friday, as an administrative assistant with the employer's insurance agency business client. The business client had continued work available for the claimant and had discussed the possibility of hiring her on directly.

In December the claimant's estranged husband became threatening towards her. As a result of an incident involving a direct threat and an attempt on his part to block her attempt to leave her home, she obtained a protective order against him on December 22. In January 2009 he began showing up at locations the claimant was, such as grocery stores or video stores, causing her to leave to avoid placing herself in violation of the protective order. She knew he knew where she worked; however, he never appeared at or around her work location.

Around January 22 the claimant decided for her own security and that of her children, she needed to move out of state. She informed the business client, who had been aware of what she was encountering, and she asked the business client to inform the employer that she had quit because of moving out of state. The business client did not immediately do so, but did advise the employer of this when the employer contacted the business client on or about January 26 to inquire about the claimant's status.

The claimant established a claim for unemployment insurance benefits effective June 7, 2009. The claimant has received unemployment insurance benefits after the separation.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1.

Rule 871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. In general, quitting to move out of the area is a personal reason for quitting that is disqualifying to the claimant. 871 IAC 24.25(2). While quitting to move away from an actually violent or potentially violent domestic situation is a good personal reason for quitting and moving, at least where there is no evident connection to the workplace, it is not a reason attributable to the employer. While there might be a public policy argument that quitting under these circumstances should not disqualify a claimant, both legislative and regulatory attempts to create such a classification have failed. The administrative law judge is without jurisdiction to alter the law. The claimant has not satisfied her burden to establish that her quit was for a ground that would not be disqualifying to her. Benefits are 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 § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's July 15, 2009 decision (reference 01) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of January 22, 2009, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw