

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KAREN E TANK
Claimant

MASTERSON PERSONNEL INC
Employer

APPEAL 19A-UI-09032-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/20/19
Claimant: Appellant (2R)

Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment

STATEMENT OF THE CASE:

The claimant/appellant, Karen E. Tank, filed an appeal from the November 8, 2019 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 11, 2019. The claimant participated personally. The employer, Masterson Personnel Inc., participated through Jim Robertson. Chad Dorenkamp also testified.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

NOTE TO EMPLOYER:

If you wish to change the address of record, please access your account at: <https://www.myiowaui.org/UITIPTaxWeb/>.

ISSUE:

Did the claimant quit by not reporting for an additional work assignment within three business days of the end of the last assignment?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed on assignment for the employer at Tri-Mark from May 2018 until October 14, 2019 when the assignment, but not the employment ended. When the claimant was hired, she was trained on the employer’s reassignment policy, which required she request new reassignment within three working days after an assignment ended (Employer Exhibit 1).

When the claimant was notified about the end of her assignment by Mr. Dorenkamp, she asked what she was supposed to do next? She asked if she was supposed to file for unemployment because she had no assignment and was advised to contact IWD. The employer did not interpret the claimant to be asking for a new assignment when she asked what to do next. Even

if the employer had interpreted the question as the claimant asking for a new assignment, the employer did not have new work available until weeks later in November.

The employer did contact and offer an assignment to the claimant on December 4, 2019 and she declined the offer. The issue of whether she refused a suitable offer of work has not yet been addressed by the Benefits Bureau.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment with good cause attributable to the employer.

Iowa Code section 96.5(1)j provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. (1) 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.

(2) 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.

(3) For the purposes of this paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(b) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

Iowa Admin. Code r. 871-24.26(15) provides:

Employee of temporary employment firm.

- a. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm within three days of completion of an employment assignment and seeks reassignment under the contract of hire. The employee must be advised by the employer of the notification requirement in writing and receive a copy.
- b. The individual shall be eligible for benefits under this subrule if the individual has good cause for not contacting the employer within three days and did notify the employer at the first reasonable opportunity.
- c. Good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business; blinding snow storm; telephone lines down; employer closed for vacation; hospitalization of the claimant; and other substantial reasons.
- d. Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer, or any other currently acceptable means of communications. Working days means the normal days in which the employer is open for business.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the claimant did make sufficient contact to request reassignment and that no assignment was offered.

The purpose of the statute 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. The plain language of the statute allows benefits for a claimant "who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment." The employer does have a written copy of the reporting policy according to the specific terms of Iowa Code § 96.5(1)j. In this case, the administrative law judge is persuaded the claimant's question of "what do I next" could be reasonably construed to be asking about a new assignment, even if she did not use the exact words. The employer did not have work available at the time until November. Since she contacted the employer upon notification of the end of the assignment, requested reassignment, and there was no work available, benefits are allowed, provided she is otherwise eligible.

DECISION:

The November 8, 2019 (reference 01) initial decision is reversed. The claimant's separation from employment was attributable to the employer. The employer had adequate knowledge about the conclusion of the claimant's assignment and the request for more work but had no further work available at the time. Benefits are allowed, provided the claimant is otherwise eligible. **REMAND:** The issue of whether the claimant refused a suitable offer of work with Masterson Personnel Inc. on December 4, 2019 is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
Administrative Law Judge
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Decision Dated and Mailed

jlb/scn