

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROSALIND R SWIFT
Claimant

APPEAL NO. 11A-UI-08487-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAMBRIDGE TEMPOSITIONS INC
Employer

**OC: 05/22/11
Claimant: Respondent (3)**

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Rosalind Swift filed a timely appeal from the June 21, 2011, reference 02, decision that allowed partial benefits, provided she was otherwise eligible, based on an Agency conclusion that the quit was from part-time employment, but that denied benefits based on base period wage credits earned through work for this employer on December 8-10, 2010. After due notice was issued, a hearing was held on July 20, 2011. Elaine Pruett, Account Manager, represented the employer. Ms. Swift did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate.

Ms. Swift had been properly notified of the appeal hearing in this matter by notice mailed to her address of record on July 1, 2011. Ms. Swift failed to respond to that notice and also failed to respond to a separate hearing notice mailed to her on July 1, 2011 regarding another hearing set for July 20, 2011. See Appeal Number 11A-UI-08486-JTT. Neither notice was returned to the Appeals Section as undeliverable for any reason.

ISSUES:

Whether Ms. Swift separated from the employment for a reason that disqualifies her for unemployment insurance benefits. She did.

Whether the quit was from part-time or full-time employment. The quit was from full-time employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Cambridge Tempositions is a temporary employment agency. Rosalind Swift started a full-time, temp-to-hire work assignment on December 8, 2010 at BHFO Warehouse. The full-time hours of the assignment were 8:00 a.m. to 4:30 p.m., Monday through Friday. Ms. Swift appeared for her scheduled shifts on December 8-10, 2010, but then ceased to appear for work or make further contact with the employer thereafter. The employer, Cambridge Tempositions, and the client business, BHFO Warehouse, continued to have work for Ms. Swift in the full-time assignment at the time she ceased appearing for work.

Ms. Swift made no further contact with the employer until April 14, 2011, when she contacted the employer for the sole purpose of obtaining paperwork she needed to an application for public assistance for housing. Ms. Swift then made no further contact with the employer until May 10, 2011, when she contacted the employer looking for work. Ms. Swift provided no explanation to the employer regarding why she had stopped appearing for work after December 10, 2010.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

Ms. Swift failed to appear for the hearing and thereby failed to present any evidence to indicate that she had quit for good cause attributable to the employer or that the employer had somehow initiated the separation.

The evidence in the record indicates that Ms. Swift voluntarily quit her full-time, temp-to-hire work assignment on December 10, 2010 for personal reasons by failing to appear for work or make contact with the employer thereafter until several months later. Because the quit was from full-time employment and the quit was without good cause attributable to the employer, effective December 10, 2010, Ms. Swift is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Swift for benefits disbursed for the period on or after December 10, 2010.

At fact-finding, the Workforce Development mischaracterized the employment as part-time. The information presented at the fact-finding interview, as well as the evidence presented at the time of the appeal hearing separately establish that the employment was in fact *full-time*. Accordingly, Iowa Administrative Code section 871 IAC 24.27, pertaining to voluntary quits from part-time employment, does not apply.

DECISION:

The Agency representatives June 21, 2011, reference 02, decision is modified as follows. Effective December 10, 2011, the claimant voluntarily quit the *full*-time employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to the claimant for the period on or after December 10, 2010.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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