

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CYNTHIA N GLOVER-NURSE
Claimant

APPEAL NO. 13A-UI-00434-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

OC: 12/02/12
Claimant: Appellant (2)

Section 96.5-1-j - Voluntary Leaving - Temporary Employment

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated January 10, 2013, reference 02, which denied unemployment insurance benefits finding that the claimant voluntarily quit employment on December 2, 2012 when the claimant failed to notify the temporary employment firm within three working days of the completion of her last work assignment. After due notice was provided, a telephone hearing was held on February 12, 2013. The claimant participated personally. Participating on behalf of the claimant was Ms. Elizabeth Norris, Attorney, Legal Aid. The employer participated by Ms. Sarah Fiedler. Employer's Exhibit One and Claimant's Exhibits A and B were received into evidence.

ISSUE:

At issue is whether the claimant voluntarily left her employment service by failing to notify the temporary employment service within three working days of the completion of her last assignment of her availability for work.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Cynthia Glover-Nurse began employment with Team Staffing Solutions on September 4, 2012. At the time of hire the claimant signed an agreement to contact the temporary employment service within three working days of the completion of each work assignment to give the temporary service notice of her availability. Ms. Grover-Nurse began an assignment with a client employer on October 15, 2012. The assignment was with Engineered Classic Components Company where Ms. Glover-Nurse was assigned to work as a general production worker and was paid by the hour. Per a prearranged agreement between the claimant, Team Staffing Solutions and the client employer, Ms. Glover-Nurse was off work November 31 through Wednesday, December 5, 2012 when Ms. Glover-Nurse contacted the client employer on December 5, 2012 she was informed by the client company that the assignment had ended.

The claimant called Team Staffing Solutions and spoke with "Ellie" on December 5, 2012. At that time the representative of the temporary employer acknowledge that they were aware that the assignment had ended and the representative stated to the claimant that she would find the

claimant more work. The claimant was next contacted on December 7, 2012 by Team Staffing Solutions and the claimant attempted to report for a job interview that was scheduled for that day. Subsequently the claimant was assigned to and accepted more assignments through Team Staffing Solutions.

It is the employer's position that company records do not reflect that Ms. Glover-Nurse contacted the temporary employment service within three working days as required. It is the employer's belief that there was no contact until December 7, 2012 and that contact was limited solely to the claimant requesting a password to her pay account. The employer thus concluded that the claimant had not contacted the temporary employment service within three working days as required. The claimant was considered to have voluntarily quit.

REASONING AND CONCLUSIONS OF LAW:

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

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.

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.

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 the temporary assignment. In this matter the claimant testified under oath and with specificity that she had contacted the temporary employment service the same day as she was notified that her assignment was ended and that the temporary employment company was aware that the claimant was available and promised to find her additional job assignment. Ms. Glover-Nurse also testified that she was contacted by the temporary employment service on December 7 and at that time attempted to report for a job interview that was arranged by Team Staffing Solutions.

The administrative law judge concludes that the evidence is in support of the claimant in this matter. While hearsay is admissible in administrative proceedings it cannot be accorded the same weight as sworn direct testimony providing that the direct testimony is credible and not inherently improbable. In this matter the claimant testified with specificity as to the dates, the conversations and the individuals involved in the conversations related to her contact with the temporary employment service to establish her availability for additional work assignments within three days of the completion of her last assignment that had ended on December 5, 2012. The administrative law judge concludes that the claimant's leaving employment was with good cause attributable to the employer. The assignment ended and there was not further work available to the claimant at that time. Benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated January 10, 2013, reference 02, is reversed. The claimant left employment with good cause attributable to the employer. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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