

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

PETER J OLINGER  
3523 CARR RD  
TODDVILLE IA 52341

KELLY SERVICES INC  
99 W BIG BEAVER RD  
TROY MI 48084-4716

Appeal Number: 06A-UI-04985-HT  
OC: 10/30/05 R: 03  
Claimant: Appellant (4-R)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The claimant, Peter Olinger, filed an appeal from a decision dated May 3, 2006, reference 07. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on May 24, 2006. The claimant participated on his own behalf. The employer, Kelly Services, participated by Senior Supervisor Nancy Voelker.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Peter Olinger was employed by Kelly Services from

March 9 until April 10, 2006. He was assigned to Worley Warehouse on an as-needed basis. He was not guaranteed any maximum or minimum number of hours.

The claimant had previously requested a redetermination of his claim from Iowa Workforce Development as a business permanently closed. This request was denied in a decision of March 10, 2006. However, the business did permanently close at a later date and the redetermination was granted in a decision of April 6, 2006.

When Mr. Olinger received the decision allowing the redetermination of his claim, he knew he had more unemployment benefits to draw upon. He then decided to draw unemployment rather than work and notified Kelly Services on April 10, 2006, he was quitting.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is not.

Iowa Code section 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.

871 IAC 24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

The claimant's resignation from Kelly Services was not for good cause attributable to the employer. It was based solely on the fact he would be able to draw more unemployment benefits from his previous employer. However, this was part-time work and under the provisions of the above Administrative Code section, he would still be qualified for benefits providing he has sufficient wages in his base period from other qualified earnings.

The administrative law judge notes the claimant's declaration that he would prefer to draw unemployment benefits rather than work. This raises some concerns for his availability for work and that matter should be remanded for determination.

DECISION:

The representative's decision of May 3, 2006, reference 07, is modified in favor of the appellant. Peter Olinger is qualified for benefits, provided he is otherwise eligible. However, the account of Kelly Services shall not be charged with benefits paid to the claimant.

The issue of whether the claimant is able and available for work, given his decision to quit in order to draw further unemployment benefits from a previous employer, is remanded to the Claims Section for determination.

bgh/kkf