

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHERRI R SMITH**  
Claimant

**APPEAL NO. 08A-UI-00074-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WESTAFF USA INC**  
Employer

**OC: 12/09/07 R: 03  
Claimant: Appellant (4)**

Iowa Code § 96.5(1)j – Temporary Employment  
Iowa Code § 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the December 31, 2007, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on January 17, 2008. Claimant participated with Olie Wright. Employer participated through James Cole and Vicki Matthias. Claimant's Exhibit A was received.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits or if she quit the employment without good cause attributable to the employer.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time temporary production worker assigned at Bertsch in Jesup from October 15, 2007 until December 11, 2007. On December 10, she left a message advising employer her car was not working, could not arrange another ride to work, and she could not afford to get it repaired until Friday, December 14. On December 11, a man called employer and left a message stating claimant would not be able to work from December 11 through 13 because her car's alternator was being repaired. She called Cole later in the day and was told the assignment ended on December 11 but she did not quit her job and Cole did not tell her she was fired. On Friday, December 14, she got a ride to employer's office to pick up her check so she could pay for the repair and told Cole she was available for work but no work was available. She called again on or about December 17 or 18 and spoke to an unidentified woman who said there was no work available then either. There has been no subsequent communication between the parties.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was not available for work during the week ending December 15, 2007 due to transportation issues and

because of that was told that her assignment had ended. She then adequately notified employer of her availability for additional assignments when the transportation issue was resolved on December 14, 2007.

Iowa Code § 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.23(4) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. (See subrule 24.24(7)).

Iowa Code § 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 § 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 § 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.

Since claimant was unable to work during the majority of the week ending December 15 due to a lack of transportation, she is ineligible for benefits for that week. However, since she was told the assignment, or at least her part in the assignment, had ended December 11, the separation from that assignment was with good cause attributable to the employer. She then gave employer adequate notice of her availability to work on December 14 and again on December 17 or 18, 2007. The employer had adequate statutory notice of the claimant's availability on December 14, 2007. Benefits are allowed.

**DECISION:**

The December 31, 2007, reference 01, decision is modified in favor of the appellant. The claimant's separation from employment on December 11, 2007 was attributable to the employer. The claimant was not available for work the week ending December 15, 2007 due to transportation issues but had adequate contact with the employer about her availability effective

December 16, 2007 as required by statute. Benefits are allowed effective December 16, 2007, provided the claimant is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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