

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MELANIE R LEWIS**  
Claimant

**APPEAL NO. 15A-UI-13022-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KELLY SERVICES INC**  
Employer

**OC: 06/21/15**  
**Claimant Appellant (4)**

Iowa Code Section 96.5(1)(a) – Voluntary Quit to Accept Other Employment

**STATEMENT OF THE CASE:**

Melanie Lewis filed a timely appeal from the November 17, 2015, reference 03, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on an Agency conclusion that Ms. Lewis had voluntarily quit the Kelly Services employment on August 12, 2015 without good cause attributable to the employer. After due notice was issued, a hearing was held on December 14, 2015. Ms. Lewis participated. Roberta Shinbori, District Manager, represented the employer. The record was left open for the limited purpose of allowing the claimant to submit paystubs from her new employment. On December 15, 2015, the claimant submitted the paystubs, which were received into evidence as Exhibit A.

**ISSUE:**

Whether Ms. Lewis separated from the employment for a reason that disqualifies her for benefits or that relieves the employer of liability for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Kelly Services, Inc., is a temporary employment agency. Melanie Lewis most recently performed work for Kelly Services in a full-time temporary two-week work assignment, but voluntarily quit the assignment and the employment on August 12, 2015. On August 10 or 11, 2015, HJ Heinz Operating Partnership offered Ms. Lewis full-time, permanent employment. HJ Heinz told Ms. Lewis that her start date would be August 17, 2015. HJ Heinz told Ms. Lewis that she would have to appear for a pre-employment physical on August 13, 2015. On August 12, Ms. Lewis gave notice to Tracy Carbis, Kelly Services Staffing Supervisor that she had found other work and was quitting Kelly Services effective August 12, 2015 to accept the new employment. HJ Heinz subsequently pushed back Ms. Lewis' start date to August 31, 2015. Ms. Lewis commenced the new employment and continues in the new employment.

## REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Code section 96.5(1)(a) provides as follows:

Causes for disqualification.

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:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, *and the individual performed services in the new employment*. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

[Emphasis added.] The administrative law judge must follow the plain language of the statute.

The evidence in the record establishes that Ms. Lewis voluntarily quit the Kelly Services employment for the sole purpose of accepting the other, better employment at HJ Heinz. Though the start date was briefly delayed, Ms. Lewis did indeed perform services for the new employer. Because the voluntary quit from the Kelly Services employment was without good cause attributable to the employer, the employer account of Kelly Services will not be charged for benefits paid to Ms. Lewis for the period beginning August 12, 2015. Because the sole basis of the quit was acceptance of other, better employment, and because Ms. Lewis performed work for the new employer, Ms. Lewis' voluntary quit from Kelly Services did not and does not disqualify her for unemployment insurance benefits. Ms. Lewis is eligible for benefits provided she meets all other eligibility requirements.

**DECISION:**

The November 17, 2015, reference 03, decision is modified as follows. The claimant voluntarily quit the employment on August 12, 2015 without good cause attributable to the employer, but for the sole purpose of accepting other, better employment. The claimant performed work for the new employer. The employer account of Kelly Services will not be charged for benefits paid to the claimant for the period beginning August 12, 2015. The claimant's voluntary quit from Kelly Services did not and does not disqualify her for unemployment insurance benefits. The claimant is eligible for benefits, provided she meets all other eligibility requirements.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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