

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRANCE MCDERMOTT
Claimant

APPEAL NO. 10A-UI-13747-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING INC
Employer

**OC: 08-15-10
Claimant: Appellant (4)**

Section 96.5(1) – Voluntary Leaving
871 IAC 24.26(19 & 22) – Voluntary Leaving
Section 96.5-1-j – Reassignment from Employer
Section 96.4-3 – Able and Available for Work

STATEMENT OF CASE:

The claimant filed a timely appeal from the September 30, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 18, 2010. The claimant participated in the hearing with his wife/witness, Cyndi McDermott. Carrie Cannon, Team Lead in Dubuque office, and Colleen McGuinty, Unemployment Benefits Administrator, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left his employment, whether he sought reassignment from the employer and whether he is able and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired by L A Leasing March 2, 2006. He was last assigned to Nordstrom's Distribution Center from August 5, 2010 to August 12, 2010. The on-site supervisor did not instruct him to return Friday, August 13, 2010, or the following week. The claimant called the employer the morning of Monday, August 16, 2010, and asked if it was going to have any work for that week, and it indicated it did not look like there was any available work for the following week or so but if anything came up it would call him. On September 10, 2010, the claimant called the employer and notified it his wife broke her hand and he was not available because he needed to help care for her and be able to drive her back and forth to her job. He became available again November 11, 2010, following his wife's hand surgery and subsequent recovery but did work November 4, 2010, at Nordstrom's for the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation was not disqualifying but he is not able and available for work from the week ending September 18, 2010 through the week ending November 13, 2010.

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 24.26(19) and (22) provide:

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.

(22) The claimant was hired for a specific period of time and completed the contract of hire by working until this specific period of time had lapsed. 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 employees shall be considered to have voluntarily quit employment.

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.

Iowa Code section 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".

Inasmuch as the claimant completed the contract of hire with the employer and sought reassignment from the employer, no disqualification regarding the separation is imposed. The claimant notified the employer he was not able and available for work beginning September 10, 2010, because his wife broke her hand and he had to take care of her and be available to drive her to work and pick her up until she reached the point in her recovery that she could drive herself November 11, 2010. Consequently, while the claimant did seek further assignment from the employer after the completion of his assignment August 12, 2010, and is eligible for benefits from that separation, he was not able and available for work from the week ending September 18, 2010 to the week ending November 13, 2010. Therefore, the claimant is eligible for benefits from the week ending August 21, 2010, to the week ending September 11, 2010; ineligible from the week ending September 18 through the week ending November 13, 2010; and then eligible again beginning the week ending November 20, 2010.

DECISION:

The September 30, 2010, reference 01, decision is modified in favor of the appellant. The claimant's separation from employment was for no disqualifying reason and he did notify the employer he was available for work until September 10, 2010. Benefits are allowed from the week ending August 21, 2010, to the week ending September 11, 2010; ineligible for the weeks ending November 13, 2010; and then eligible again because he became able and available for work effective the week ending November 20, 2010, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw