

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTY MCCLAMMY**  
Claimant

**APPEAL NO: 07A-UI-04353-ET**

**ADMINISTRATIVE LAW JUDGE  
AMENDED DECISION**

**NURSEFINDERS OF DES MOINES**  
Employer

**OC: 03-18-07 R: 02  
Claimant: Respondent (2)**

Iowa Code section 96.5(1j) – Voluntary Leaving (Temporary Assignment)  
Iowa Code section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the April 17, 2007, reference 03, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 30, 2007. The claimant participated in the hearing. Carrie Moorehouse, Branch Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct and whether the claimant sought reassignment from the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time CNA for Nursefinders from September 9, 2005 to February 26, 2007, when her assignment was ended due to inactivity on her part. She became inactive because she had no communication with the employer and stated she did not have any daycare and was having problems with her husband and would let the employer know when she could return. The employer had work available and the claimant signed a separate sheet of paper indicating she would keep in contact. November 26, 2006, was the last day the claimant worked because of her daycare and personal problems with her husband. The employer told her she could return to work when her problems were straightened out. On December 1, 2006, the employer offered the claimant a shift and she declined it without providing a reason; it also offered her a shift at Elma December 1, 2006, but the claimant did not return their call; on December 2, 2006, the employer called the claimant and offered her a shift but the claimant declined without providing a reason; on December 8, 2006, the employer offered the claimant an assignment but the claimant declined that offer; on December 15, 2006, the claimant declined a position at Elma without giving a reason for doing so; on December 16, 2006, the employer offered the claimant a shift at Elma which she declined without providing a reason; on December 18, 2006, the employer called the claimant for an overnight shift position but did not receive a return call; on December 21, 2006, the employer asked the claimant to work a shift in

Elma but the claimant declined the offer: on December 30, 2006, the employer again called and offered her work in Elma but did not receive a return call from the claimant; on December 31, 2006, the employer called for a shift in Elma and the claimant said she was out of town; on February 7, 2007, the employer offered the claimant a shift at Countryview but the claimant declined that offer because she had school; the employer also offered the claimant work that day but the claimant declined that as well; on February 9, 2007, the employer called the claimant and offered her a shift at Grandview, leaving a voice mail for the claimant but she never responded; on February 10, 2007, the employer offered the claimant a shift at Sheffield and the claimant declined the offer saying she was going to be out of town; on February 11, 2007; the employer left a message with an offer of work but did not hear from the claimant and also offered the claimant work at 2:39 p.m. at the same facility but again the claimant did not call the employer back; on January 2, 2007, the employer offered her work but the claimant declined because she was filling out DHS paperwork; on January 3, 2007, the employer offered her work at Grandview but the claimant did not return the call; on January 5, 2007, the employer called the claimant and asked if she was available for the weekend and the claimant did not return the call; on January 7, 2007, the employer called the claimant and asked her availability for that week but did not receive a call back. It called her again later in the day to ask if she would accept an assignment but the claimant did not return her call; on January 22, 2007, the employer called the claimant and she indicated she was unable to work because she was going to school and would call the employer when her schedule freed up; and on January 30, 2007, the employer called and offered the claimant work but she declined because she was going bowling and the employer made her inactive because she continually declined to accept assignments.

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without 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.

While 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 each temporary assignment so they may be reassigned and continue working, in this case, the claimant gave the employer no notice of her availability but the employer continued to call and offer her assignments although the claimant never accepted any further work from the employer. Therefore, she is considered to have quit her employment by failing to be available, even though the claimant may have returned to work for the temporary agency at some later date. Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to

the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The April 17, 2007, reference 03, decision is reversed. The claimant's separation was not attributable to the employer. Benefits are withheld until such time as the claimant works in and has been paid for wages equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid unemployment insurance benefits in the amount of \$4,311.35.

---

Julie Elder  
Administrative Law Judge

---

Decision Dated and Mailed

je/pjs/css