

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JANICE A GULLION**  
Claimant

**APPEAL NO. 08A-UI-08360-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEMPRO SERVICES INC**  
Employer

**OC: 07/06/08 R: 04**  
**Claimant: Respondent (4)**

Iowa Code § 96.5(1)a – Voluntary Leaving – Other Employment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 10, 2008, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on October 6, 2008. Claimant participated. Employer participated through Colleen McGuinty and Ruthann Sheley.

**ISSUE:**

The issue is whether claimant 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 receptionist at Swiss Valley Farms (SVF) from December 10, 2007 until March 12, 2008. Her last day of work was February 5, 2008. On February 6 she fell on the ice at home and broke her ankle. She was unable to contact Temprow but did reach SVF to explain she would not be able to work for a couple of weeks and asked them to contact Temprow. On February 7, Sheley from Temprow called claimant on her cell phone at the hospital and told her “they [SVF] did not need her back at that time” although there may have been an additional two or three weeks’ work had she been able to work. Claimant was discharged from the hospital on February 8 and was unable to leave her house either in a wheelchair or on crutches until the cast was removed on March 12, 2008. She did not call Temprow for additional work as she had an interview and was hired by Collin A. Lodico, P.C. (307738) on March 13, 2008 for what she believed would be full time work with benefits. Her earnings with Lodico before her separation in June 2008 were \$2, 257.00 and her weekly benefit amount (WBA) is \$265.00.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment to accept employment elsewhere.

Iowa Code § 96.5-1-a 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:

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.

871 IAC 24.28(5) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment.

Although claimant was not able to work from February 6 through March 12, 2008 because of her non-work-related injury she did not have an active claim during that period. Since she did not return to Tempco after her medical release but immediately found employment and performed services for the subsequent employer Lodico, she is considered to have quit Tempco to accept employment elsewhere. Accordingly, benefits are allowed and the account of the employer shall not be charged.

**DECISION:**

The September 10, 2008, reference 01, decision is modified in favor of the appellant. The claimant voluntarily left her employment in order to accept other employment. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer (account number 222649) shall not be charged.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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