

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ZADA K GIFFORD
Claimant

APPEAL NO: 12A-UI-09107-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES - MARSHALLTOWN
Employer

**OC: 12/18/11
Claimant: Appellant (2)**

Section 96.5-1-j – Voluntary Quit/Re-Assignment
Section 96.4-3 – Able and Available
871 IAC 26.14(7) – Request to Re-open

STATEMENT OF THE CASE:

The claimant appealed a department decision dated July 19, 2012, reference 04, that held she voluntarily quit without good cause attributable to her employer on May 30, 2012, and benefits are denied. A telephone hearing was held on August 22, 2012. The claimant participated. The employer did not participate.

ISSUE:

Whether the claimant voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The claimant began employment on January 18, 2010, and last worked for the employer on assignment at Grinnell College as a cleaning person on February 14, 2012. The claimant was injured in a fall at the college and placed on light duty.

Since the claimant could not perform cleaning work, the employer put her on light duty in its office doing some clerical duties. The claimant was released without restriction to return to full duty work on May 30. The employer had no assignment to offer her at that time.

Although the employer attempted to offer claimant further work on and after June 7, the parties were unable to get together regarding a work assignment. Claimant accepted employment at Culvers about July 14, is working as many as 40 hours a week, and she is attending night classes to get her GED. Claimant ceased claiming for benefits the week ending July 14.

The employer representative was not available when called for the hearing. The representative called after the close of the record as she was participating in a workers' compensation matter. There was no employer request to re-schedule or call to UI appeals about any conflict pre-hearing.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

At issue is a request to reopen the record made after the hearing had concluded. The request to reopen the record is denied because the party making the request failed to participate by reading and following the instructions on the hearing notice.

The employer failed to establish a good cause to reopen the record. The employer made a choice to participate in a non-hearing related phone call with another party that is not a good cause to reopen the record.

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.

The administrative law judge concludes the claimant completed her job assignment on May 30, 2012, and the employment separation is with good cause based on the employer having no work available.

The employer moved claimant from a regular duty assignment on February 14 to an in-house clerical position due to a job-related injury that restricted claimant to light duty. It had no assignment to offer claimant when she was released from light duty on May 30 though it could have continued the clerical position until an assignment became available.

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".

The administrative law judge further concludes no availability disqualification is imposed effective May 30, 2012. The claimant schooling is to obtain a GED and the claimant is doing this with night classes while working full-time hours at Culvers beginning July 14. She has proven she can work and attend the classes.

DECISION:

The department decision dated July 19, 2012, reference 04, is reversed. The claimant voluntarily quit with good cause attributable to her employer on May 30, 2012. No availability disqualification is imposed. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs