

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**MICHELE L GODWIN
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**Appeal Number: 05A-UI-02912-LT
OC: 01-30-05 R: 04
Claimant: Appellant (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Iowa Code § 96.5(1)j – Voluntary Leaving – Temporary Employment

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the March 14, 2005, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on April 27, 2005. Claimant did participate. Employer did participate through Jenny McNeil.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time production worker assigned to Vista Bakery through January 28, 2005 when her Vista supervisor, Mike Overhake, told her the temporary workers were being laid off, some permanently, effective at the end of that shift. The next Monday, January 31, claimant called Temp Associates and spoke to the person that answered the telephone who

told her there was no work at the time, but she would enter claimant's availability into the computer.

Claimant picked up her check on February 3. She had intended to call Temp Associates for callback to Vista every Monday beginning February 7 but on Friday, February 4, Temp Associates called claimant's grandmother (the contact number claimant had provided to employer) and told her that Vista would not be taking back claimant as a temporary employee. Because of that message, claimant did not call employer again. At no time did employer personally advise claimant of a recall to Vista effective February 14.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment with 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.

Claimant's written fact-finding statement is consistent with her testimony. In the hearing, the employer witness claimed that one call was made to leave a message with claimant's grandmother on February 4 and that claimant called employer back and was given information about a recall on February 14. In the fact-finding interview notes, employer reported making two calls to claimant, first that she was not recalled on February 7 and the second that she was recalled on February 14. Employer's own testimony is at direct odds with the fact-finding interview notes about how many calls were made and who made them, thus employer's testimony is not credible.

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 the temporary assignment. In this case, the employer had notice of the claimant's availability because she contacted the employer the Monday after her Friday layoff and was told there was no work available for her. She later received a message that she would not be recalled and was permanently laid off from the assignment at Vista. Accordingly, benefits are allowed.

DECISION:

The March 14, 2005, reference 02, decision is reversed. The claimant's separation from employment was attributable to the employer. The claimant had adequate contact with the employer about her availability as required by statute but was advised she was permanently laid off. Benefits are allowed, provided the claimant is otherwise eligible.

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