

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KRYCHELLE E WILSON
Claimant

REMEDY INTELLIGENT STAFFING INC
Employer

APPEAL 17A-UI-03700-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/19/17
Claimant: Respondent (2R)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the March 22, 2017, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on May 2, 2017. The claimant did not participate. The employer participated through Senior Staffing Consultant Keyshona Frick. Employer's Exhibit 1 was received into evidence.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was last assigned at FedEx Supply Chain as a rework associate from November 28, 2016, to February 17, 2017 when she was discharged from the assignment. On February 17, 2017, Frick phoned claimant to let her know she had been discharged from her assignment and to offer her a new assignment. When offered the new assignment, claimant told Frick she would think about it and get back to her. The employer has a policy in place which requires employees to report their availability for a new assignment within three working days of an assignment ending. Claimant was told about this policy during orientation on October 28, 2017 via a PowerPoint presentation. Frick did not hear back from claimant again until May 1, 2017. Claimant was offered the same assignment at that time, but declined the offer.

The claimant filed a new claim for unemployment insurance benefits with an effective date of February 29, 2017. Claimant has not received any unemployment insurance benefits to date. The employer participated in a fact-finding interview regarding the separation on March 21, 2017. The fact finder determined claimant qualified for benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer.

Iowa Code § 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. (1) 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.

(2) 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.

(3) For the purposes of this lettered paragraph:

(a) "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.

(b) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

Iowa Admin. Code r. 871-24.26(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 § 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 § 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.

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. The plain language of the statute allows benefits for a claimant “who notifies the temporary employment firm of completion of an assignment *and* who seeks reassignment.” (Emphasis added.)

In this case, the employer had notice of the claimant’s availability because it notified her of the end of the assignment. At the time she was notified her assignment was ending, claimant was offered a new assignment and told the employer she would think about it and get back to them. Claimant made no attempt to contact the employer again until two and a half months later and, therefore, is considered to have quit the employment without good cause attributable to the employer. As claimant has not received any benefits to date, the issues of overpayment and participation are moot.

During the hearing the employer gave testimony indicating that, after filing her claim, on May 1, 2017, claimant may have refused a reasonable offer of work. This issue must be remanded to the benefits bureau for initial investigation and determination.

DECISION:

The March 22, 2017, (reference 02) unemployment insurance decision is reversed. The claimant’s separation was not attributable to the employer. Benefits are withheld until such time as she is otherwise eligible. The issues of overpayment and participation are moot.

REMAND:

The issue of whether claimant refused a reasonable offer of work is remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs