IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ETHAN MARBERY
Claimant

WORKSOURCE INC
Employer

APPEAL NO: 11O-UI-15404-ET

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09-26-10
Claimant: Respondent (1)

Section 96.5(1) – Voluntary Leaving
871 IAC 24.26(19 & 22) – Voluntary Leaving

STATEMENT OF CASE:

The employer filed a timely appeal from the March 30, 2011, reference 04, decision that allowed benefits to the claimant. An initial appeal hearing was held in this matter April 25, 2011. The claimant appealed the decision to the Employment Appeal Board. Because the recording of the April 25, 2011, hearing could not be located, the issue was remanded to the Appeals Section for a new hearing in an order from the Board dated September 23, 2011. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 31, 2012. The claimant participated in the hearing. Nancy Parli, branch manager, participated in the hearing on behalf of the employer. Employer's Exhibits One and Two were admitted into evidence.

ISSUE:

The issue is whether the claimant voluntarily left his employment.

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, third-shift general laborer for WorkSource last assigned to Siemens from January 21, 2011 to March 7, 2011. The claimant called Account Manager Lorie Streeter March 6, 2011, and stated he was unable to work that night because his wife's aunt was dying in Florida, she was on her way there to see her, and consequently the claimant did not have childcare that evening. Ms. Streeter told the claimant that was fine and instructed him to come in to talk to her the following morning. The claimant called Ms. Streeter March 7, 2011, to double-check what time she wanted to meet. While his wife was on her way to Florida, her aunt died, and the claimant told Ms. Streeter about that when they met in person and asked her if he could work the day shift due to childcare issues until his wife returned from Florida. She told him there were no openings on first shift and then told him the client decided to end his assignment. The claimant had one previous absence accompanied by a doctor's excuse and would have worked the evening of March 7, 2011, if he could not move to day shift or could not have any time off that week until his wife returned but was not allowed either option. Ms. Streeter also told the claimant there were no further assignments available. The claimant

called Ms. Streeter March 9, 2011, to discuss the situation further and was not offered another position or told he needed to continue to call in at that time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation was not disqualifying.

Iowa Code section 96.5-1 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.

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.

871 IAC 24.26(22) 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:
>
> (22) The claimant was hired for a specific period of time and completed the contract of hire by working until this specific period of time had lapsed. 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 employees shall be considered to have voluntarily quit employment.

While the employer maintains the claimant voluntarily quit and did not complete his assignment, the claimant credibly testified he was told the client did not want him to return, and the claimant's firsthand testimony carries more weight than that of the employer's secondhand witness. The claimant completed the assignment at Siemens when the client stated it did not

want him to return following one potentially unexcused absence that the claimant effectively could not control. He did not quit his job. He asked about other options but was told he could not move to first shift and the employer did not have any other work available for him. After calling Ms. Streeter March 6, 2011, and going in to meet with her March 7, 2011, the claimant called the employer March 9, 2011, and was told the employer did not have any further work for him. Inasmuch as the claimant completed the contract of hire with the employer and sought reassignment from the employer, no disqualification is imposed. Therefore, benefits are allowed.

DECISION:

The March 30, 2011, reference 04, decision is affirmed. The claimant's separation from employment was for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder
Administrative Law Judge

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Decision Dated and Mailed

je/kjw