

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BOBBI J WALKER
Claimant

ALL IN A DAY LLC
Employer

APPEAL NO. 19A-UI-00384-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/23/18
Claimant: Appellant (1)

Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment
Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated January 11, 2019, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on January 30, 2019. Claimant participated personally. Employer participated by Toni Holguin and Vianca Avalos. Employer's Exhibits 1-7 were admitted into evidence.

ISSUE:

Did the claimant quit by not reporting for an additional work assignment within three business days of the end of the last assignment?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant worked for employer at a placement at Mauer Manufacturing from April until July 13, 2018. After claimant was dismissed from that job, she was immediately in contact with employer asking for a new placement.

When claimant initially filled out her paperwork for employer she did not list job restrictions, but did mention job preferences. Claimant stated that she preferred to have a first shift job, preferred it to be within a close radius to her address, and preferred not to have heavy lifting. Claimant also indicated that she would need time to set up babysitting.

Over the next number of months, claimant and employer were in occasional contact with one another. Claimant occasionally asked for jobs although she hadn't contacted employer for a period of months. On December 23, 2018 claimant filed an original claim with IWD. At or around the same time, she also contacted employer. On December 27, 2018 employer contacted claimant with a first shift warehouse position paying \$10.00 an hour. Claimant returned the call saying she wanted to be paid more than offered in this job. On January 11, 2019 employer called claimant with a \$12.00/hr job on a day shift. Employer told claimant that this was a quick fill position. Claimant stated that she needed to speak with her husband, and stated that she needed a couple of weeks before starting to be able to set up child care. By the time claimant had called employer back on January 16, 2019, the position had been filled.

Employer has continued to call claimant with other possibilities in an attempt to find claimant a job that would fit for her.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)j provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce 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 Code § 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".

Iowa Admin. Code r. 871-24.23(3) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code section 96.4(3).

For the reasons that follow, the administrative law judge concludes the claimant initially was in proper contact with employer after the job separation from Mauer, but has not been able and available for work. After the July job separation, claimant was in and out of contact with employer over the next few months. Employer did occasionally contact claimant with employment offers while claimant was out of contact. Claimant though, has stated a different framework for employment than she'd initially demanded at the time of her hire. At the time of her hire, claimant did not list work restrictions.

Claimant did not work for over 18 weeks since the end of her work with Mauer Manufacturing. While working for Mauer, she was making \$13.25 an hour. Under Iowa law, claimants are considered not able and available for work when they refuse work offered at sixty-five percent of their previous wage if they've been unemployed for 18 weeks. Claimant was offered employment at \$10.00 an hour in a warehouse on December 27, 2018. As this is more than sixty-five percent of what she'd most recently made, claimant's decision not to accept the job disqualifies claimant from the receipt of benefits.

Employer has continued to give claimant bona fide job offers. As claimant must arrange daycare prior to beginning a job, she's stated that she needs weeks of advance notice before beginning a job. This request, though understandable, is not reasonable for many of the job openings that present themselves, as potential job placements need people immediately and that is why they enlist recruitment services. Claimant's not being able to start work in short order when jobs are offered has the result of greatly limiting claimant's availability for employment.

DECISION:

The January 11, 2019, (reference 01) unemployment insurance decision is affirmed. Whereas claimant was in appropriate contact with employer after the job separation, she has not been able and available to work when requested. Benefits are withheld until such time as she works in and has been paid for wages equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn