

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LYNDA S MIELL
Claimant

APPEAL NO. 07A-UI-04066-DT

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

**HELPING HANDS TEMPORARY
SERVICES INC**
Employer

**OC: 01/07/07 R: 02
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Helping Hands Temporary Services, Inc. (employer) appealed a representative's April 11, 2007 decision (reference 02) that concluded Lynda S. Miell (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 7, 2007. The claimant participated in the hearing. Arlene Wenzel appeared on the employer's behalf and presented testimony from one other witness, Marna Mitchell. The decision is amended to correct a mathematical error in the calculation of the overpayment of benefits. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant began her first and, to date, only assignment on March 19, 2007. Her last day on the assignment was March 20, 2007.

The assignment was to work 7:00 a.m. to 3:30 p.m., Monday through Friday, for an indefinite duration, potentially temp-to-hire, as a parts puller for the employer's manufacturing business client. Prior to starting the assignment but after accepting the assignment, the claimant informed the employer on March 17 that she was experiencing family issues due to a sick grandmother, so that her mother needed her to be available, and so she would not be able to finish the assignment, but would stay in the assignment until the employer could fill the position with someone else. The claimant worked her scheduled shift in the assignment on March 19.

On March 20 the claimant reported for her scheduled shift but then called the employer at approximately 8:05 a.m. to indicate that she was going to have to leave the assignment that day and that it would be that morning due to her grandmother taking a turn for the worse, so she

would have to leave in an hour to go to the Iowa City hospitals. In that conversation, she in passing also mentioned that the black fibers used in the client operation were bothering her and that her eyes had been matted shut; she indicated she had not been able to find a mask, but she acknowledged she had not asked the person in charge at the site. At approximately 8:20 a.m. the claimant called the employer again and reported that her mother was waiting for her in the parking lot and that she was leaving right at that point, which she did. She did not subsequently seek to return to that assignment or another assignment.

The claimant established a claim for unemployment insurance benefits effective January 7, 2007. Beginning the week ending March 24, 2007, the claimant received unemployment insurance benefits after the separation from employment in the amount of \$3,020.00

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer.

Iowa Code § 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 24.25(23) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

871 IAC 24.26(6)b 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:

(6) Separation because of illness, injury, or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and

constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. Clearly the primary reason for the claimant's premature departure from the assignment was for personal family issues, not attributable to the employer. Further, to the extent the question of the fibers in the workplace may have played a role, the claimant has not presented competent evidence showing adequate health reasons to justify her quitting; also, before quitting she did not inform the employer of the work-related health problem and inform the employer that she intended to quit unless the problem was corrected or reasonably accommodated. A person who quits employment without good cause attributable to the employer must be disqualified from further benefits even if that person has given up unemployment insurance benefits to accept the work which was then considered unsuitable. Taylor v. Iowa Department of Job Service, 362 N.W.2d 534 (Iowa 1985). The claimant has not satisfied her burden. Benefits are denied.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's April 11, 2007 decision (reference 02) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of March 20, 2007, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$3,020.00.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw/kjw