

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CELETIA M CLAYBORNE
Claimant

MANPOWER INTERNATIONAL INC.
Employer

APPEAL 21A-UI-09923-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

On April 7, 2021, claimant, Celetia M. Clayborne, filed an appeal from the March 29, 2021, reference 03, unemployment insurance decision that denied benefits based upon the determination that she voluntarily resigned her employment with the employer, Manpower International, Inc., when she failed to notify it within three days of the end of her assignment. The parties were properly notified about the hearing held by telephone on June 22, 2021. The claimant participated personally. The employer participated through Senior Recruiter Jeny Hera.

ISSUES:

Did the claimant quit her employment without good cause attributable to the employer?
Was claimant able to and available for work effective the week ending January 24, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant last worked on assignment through the employer on January 14, 2021, at Dr. Pepper. That assignment ended when claimant determined the physical demands of the assignment were too great. The placement also determined that claimant was not a good fit for the assignment. The employer considered the assignment ended by mutual agreement as of January 14, 2021.

Prior to accepting the assignment that began on January 14, 2021, claimant and Hera had a discussion about the physical demands of the job. Claimant accepted the assignment to see if she could perform the required duties. She acknowledged that she accepted the assignment after having been informed of its requirements.

After the Dr. Pepper assignment ended, claimant emailed with Hera, and spoke with her on the phone in the days that followed. She did inquire with Hera regarding whether there was other work available to claimant. However, Hera notified her that there was not work available that fit within claimant's needs.

Claimant was not under work-related restrictions imposed by a doctor. However, her childcare ended after her assignment ended because she could not afford it. In April 2021, claimant moved to Missouri.

REASONING AND CONCLUSIONS OF LAW:

The first question here is whether claimant left employment without good cause attributable to the employer. For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment with 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." Since claimant contacted the employer within three working days of the notification of the end of the assignment, requested reassignment, and there was no work available, no disqualification is imposed.

The second question is whether claimant was able to and available for work. For the reasons that follow, the administrative law judge concludes that she was not available for work as of the week ending January 24, 2021.

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—24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of

establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871—24.23(8) provides:

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

(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

In order to be eligible for benefits, an individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. In this case, claimant testified that she limited the types of work she could do because of physical demands, but this was not based on work-related restrictions imposed by a medical professional. Furthermore, claimant did not have reliable child care beginning at the end of her assignment with the employer. She was not able to or available for work for the enumerated reasons, as of the week ending January 24, 2021. Accordingly, benefits are denied.

DECISION:

The March 29, 2021 (reference 03) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective the week ending January 24, 2021. Benefits are denied.



Alexis D. Rowe
Administrative Law Judge

July 7, 2021
Decision Dated and Mailed

ar/scn