

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

FREDERICK L DAVIS
Claimant

KELLY SERVICES USA LLC
Employer

APPEAL 17A-UI-04404-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/02/17
Claimant: Appellant (2)

Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 18, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 15, 2017. Claimant participated. Employer participated through senior staffing supervisor Melissa Mitchel. Official notice was taken of the administrative record, including claimant's benefit payment history, with no objection.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a staffing agency. Claimant was hired on August 15, 2016. Claimant had just one assignment through the employer, which started on August 15, 2016. Claimant was employed in a temporary position, full-time as a general laborer last assigned at Raining Rose, Cedar Rapids, Iowa, from August 15, 2016 and was separated from the assignment on January 27, 2017 due to a lack of work. The employer received an e-mail on January 27, 2017 that claimant's assignment had ended. On January 27, 2017, the employer called claimant and informed him his assignment was over. During this conversation, the employer offered claimant a new assignment at Klein Tools, on the southwest side of Cedar Rapids, Iowa. The position with Klein Tools was: general laborer, first shift (6:30 a.m. to 3:00 p.m.), Monday through Friday, at \$9.00 per hour, and was full-time. Ms. Mitchel testified it would take fifteen to seventeen minutes by driving to get from Raining Rose to Klein Tools. Ms. Mitchel testified there is a bus that goes to Klein Tools, which serves a majority of Cedar Rapids. Claimant declined the Klein Tools assignment. Claimant did not accept the offer because he believed Klein Tools was too far from his residence. Due to the distance, claimant was going to have to ride the bus, but claimant testified the bus did not start near his residence until around 7:00 a.m. Claimant told the employer the distance was too far and he did not have transportation. The employer told claimant that they would contact him if they had anything closer.

On January 30, 2017, claimant went to the employer. Claimant asked if the employer had anything else, but the employer did not have anything available for claimant at that time. Claimant did not contact the employer after January 30, 2017. The employer did not contact claimant after January 30, 2017.

The employer does have a policy that complies with the specific terms of Iowa Code § 96.5(1)(j) requiring claimant to notify it when his assignment ends and request a new assignment. The document was separate from any contract of employment and a copy of the signed document was provided to the temporary employee. The employer does not require employees, including claimant, to maintain contact every so often (e.g., every week) to inform them of their availability. The employer does consider claimant to be an active employee and eligible for rehire.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation was with good cause attributable to the employer. Benefits are allowed.

Iowa Code section 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 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 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 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.

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for and seeking work at the end of the temporary assignment. On January 27, 2017, the employer was clearly notified that claimant's assignment had ended. After claimant's assignment ended, the employer offered him a new assignment on January 27, 2017. Although claimant may not have initiated the question of whether there was another assignment available on January 27, 2017, clearly an additional assignment was discussed with claimant during the phone call, thus satisfying the purpose of the statute. Claimant credibly testified he had to decline the offer because of the distance to the job site and the bus schedule in his area. Because of the distance, claimant had to take the bus, but he credibly testified that he could not get on the bus in his area until after his shift would have already started at the new assignment. Furthermore, claimant credibly testified on January 30, 2017 he inquired about further assignments, but the employer did not have any at that time. It is also noted that although claimant has not had any further contact with the employer since January 30, 2017, the employer still considers him an active employee and eligible for rehire. Furthermore, the employer does not require its employees to maintain contact with it to be considered an active employee.

Since claimant had contact with the employer within three working days of the notification of the end of the assignment, an assignment was discussed, and he had a good cause reason to decline the reassignment, no disqualification is imposed. Benefits are allowed.

DECISION:

The April 18, 2017, (reference 01) unemployment insurance decision is reversed. Claimant's separation from employment was attributable to the employer. Benefits are allowed, provided claimant is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/scn