

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROSE M KUDERER**

Claimant

**APPEAL NO. 15A-UI-04864-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**QPS EMPLOYMENT GROUP INC**

Employer

**OC: 03/22/15**

**Claimant: Appellant (2)**

Iowa Code Section 96.5(1)(j) – Separation From Temporary Employment

Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Rose Kuderer filed a timely appeal from the April 17, 2015, reference 02, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on an Agency conclusion that the claimant had voluntarily quit on April 6, 2015 without good cause attributable to the employer. After due notice was issued, a hearing was held on June 2, 2015. Ms. Kuderer participated. Rhonda Hefter de Santisteban represented the employer and presented additional testimony through Alisha Siegel. The hearing in this matter was consolidated with the hearing in Appeal Number 15A-UI-04865-JTT. Exhibit One was received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant (DBRO) and of the Agency's administrative record of the claimant's weekly claims for benefits (KCCO).

**ISSUES:**

Whether the claimant's April 6, 2015 separation from the temporary employment agency was for good cause attributable to the employer.

Whether the claimant was able to work and available for work during the weeks that ended April 11, April 18, and April 25, 2015.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency. The claimant began getting work through QPS Employment Group in September 2014. At that time, the employer had the claimant sign to acknowledge a 3-Day Reassignment Policy. The policy obligated the claimant to contact the employer within three working days of the end of an assignment to request placement in new assignment. The employer provided the claimant with a copy of the assignment she had signed.

In April 2015, the claimant accepted an assignment at PDM Distribution. The assignment was to start on April 6, 2015. The assignment was supposed to involve stacking bags of chicken feed onto pallets. The claimant suffers from asthma and had made the employer aware of the condition at the time the employer discussed the proposed assignment with her. The claimant was concerned that the assignment might aggravate her asthma, but expressed a willingness to try the assignment. The claimant began her work in the assignment on April 6 and completed the available hours that day. During that shift, the claimant learned for the first time that the assignment involved dealing with open bags of chicken feed and dumping out those bags. The grain dust did indeed aggravate the claimant's asthma and the claimant had to retrieve her inhaler from her car to finish the day. At the end of the shift, the claimant notified the employer that she could not return to the assignment at PDM Distribution because it aggravated her asthma, but that she was available for work in other assignments. The claimant initially spoke to Amy Siegel out of the employer's Des Moines office. Ms. Siegel directed the claimant to contact the employer's Fort Dodge office. The claimant followed the directive and contacted the Fort Dodge office that same day. The claimant left a message indicating that she would not be returning to the assignment at PDM Distributing, but was available for another assignment. The employer did not immediately have additional work for the claimant. The claimant continued to search for new employment and commenced a new assignment with the employer on April 22, 2015.

Ms. Kuderer had established a claim for benefits that was effective March 22, 2015 in response to her separation from another QPS assignment. Ms. Kuderer received \$191.00 in benefits for the week ending March 28, 2015. Ms. Kuderer received \$217.00 in benefits for the week that ended April 4, 2015. Ms. Kuderer received \$183.00 in benefits for the week that ended April 11, 2015, the week during which she started and separated from the assignment at PDM Distribution.

## **REASONING AND CONCLUSIONS OF LAW:**

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. 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.

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.

For the purposes of this paragraph:

(1) "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.

(2) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

Iowa Admin. Code r. 871-24.26(23) 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:

(23) The claimant left work because the type of work was misrepresented to such claimant at the time of acceptance of the work assignment.

The evidence in the record indicates that particulars of the assignment were misrepresented to Ms. Kuderer at the time she accepted the assignment. The evidence does not indicate that the misrepresentation was intentional. Ms. Kuderer accepted the assignment in good faith with the understanding that she would be dealing with closed bags of feed. It was particularly significant to Ms. Kuderer, in light of her asthma, that the work turned out to be something other than what the QPS representative had represented. Ms. Kuderer immediately contacted the employer upon separating from the assignment to offer her services in another assignment. The employer did not at that time have another assignment for her. Ms. Kuderer's April 6, 2015 separation from QPS was for good cause attributable to the employer. Accordingly, Ms. Kuderer is eligible for benefits provided she is otherwise eligible. The employer's account may be charged for benefits.

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(1)a, (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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(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.

Despite the issues that prevented Ms. Kuderer from continuing in the assignment at PDM, Ms. Kuderer remained able to perform and available for other work that would not aggravate her asthma. Ms. Kuderer continued her search for new employment and started a new assignment with the employer April 22, 2015. The weight of the evidence indicates that Ms. Kuderer met the able and available requirement during the period of

**DECISION:**

The April 17, 2015, reference 02, decision is reversed. The claimant voluntarily separated from an assignment and from the employer on April 6, 2015 for good cause attributable to the employer. The separation did not disqualify the claimant for benefits. The claimant is eligible for benefits provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant. The claimant was able to work and available for work during her period of April 5, 2015 through April 25, 2015.

This matter is remanded to the Benefits Bureau for determination of whether the claimant was able and available for work within in the meaning of the law effective April 26, 2015.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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