

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAROL E HEIDBREDER
Claimant

APPEAL NO. 10A-UI-09086-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES
Employer

OC: 04/04/10
Claimant: Appellant (2)

Section 96.5(1) – Voluntary Quit
Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Carol Heidbreder filed a timely appeal from the June 16, 2010, reference 01, decision that denied benefits in connection with a May 6, 2010 voluntary quit. After due notice was issued, a hearing was held on August 11, 2010. Claimant participated. Jenny McNeil, Accounts Manager, represented the employer.

ISSUES:

Whether the claimant's May 6, 2010 voluntary quit was for good cause attributable to the employer.

Whether the claimant was able and available for work from the May 6, 2010 separation date through the benefit week that ended May 22, 2010.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency. Carol Heidbreder performed work in two full-time work assignments. Ms. Heidbreder completed the first work assignment in April 2010. On April 29, Jenny McNeil, Accounts Manager, spoke to Ms. Heidbreder about a proposed new full-time data entry assignment. Ms. McNeil told Ms. Heidbreder that the data entry work would include associated warehouse work and inventory control. Ms. McNeil referred Ms. Heidbreder for an interview.

On May 3, 2010, Ms. Heidbreder participated in an interview at the client business. The interview took place in an office environment. Neither the client business representative who interviewed Ms. Heidbreder, nor Ms. McNeil, provided Ms. Heidbreder with a tour of her proposed work environs. Ms. Heidbreder assumed she would be performing the data entry work in an office type environment similar to the environment in which she had performed data entry work as part of her prior assignment with a different client.

Based on Ms. Heidbreder's limited understanding of the proposed work assignment, Ms. Heidbreder accepted an offer of employment and started work in the assignment on May 5, 2010. Ms. Heidbreder found that the work did indeed take place in an office located just off a warehouse floor. But, the office was filthy and dust-ridden. Ms. Heidbreder was instructed to use paper towels when loading the copier machine so as not to get dirt on the paper. Ms. Heidbreder's clothing was soon soiled. The dust in the work environment caused Ms. Heidbreder to sneeze and prompted her to use allergy medication. At the end of the first day in the assignment, Ms. Heidbreder was unable to speak with the Temps Associate personnel because the Temps Associate office had already closed for the day. Midway through the second day in the assignment, Ms. Heidbreder went to the Temps Associate office, said the work assignment was not the job for her, and quit the assignment. Ms. Heidbreder asked Ms. McNeil for other office type work, but the employer had no such work available to Ms. Heidbreder at that time.

Ms. Heidbreder established an additional claim for benefits that was effective May 9, 2010 and continued the claim through the week that ended May 22, 2010. While the claim was active, Ms. Heidbreder made multiple job contacts per week in search of new full-time employment. Ms. Heidbreder secured new full-time employment, which she started on May 23, 2010. Ms. Heidbreder continues in the new full-time employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

When a worker voluntarily quits work because the type of work was misrepresented to the worker at the time she accepted the work assignment, the quit is for good cause attributable to the employer. See 871 IAC 24.26(23).

The weight of the evidence indicates that Ms. Heidbreder reasonably expected and concluded, based on her prior assignment with Temps Associates, based on her discussion with Ms. McNeil about the proposed assignment, and based on her interview at the client business, that she would be performing her data entry work duties in an ordinary office environment. The weight of the evidence indicates that the assignment did not involve working in an ordinary office environment. The failure of Temps Associates and the client business to disclose to Ms. Heidbreder, prior to her acceptance of the assignment, that she would have to work in a dirty, dust-ridden environment constituted a material omission that amounted to misrepresentation of the work. This was evident to Ms. Heidbreder immediately upon starting the assignment and she promptly quit on her second day.

Ms. Heidbreder voluntarily quit the employment on May 6, 2010 for good cause attributable to the employer. Ms. Heidbreder is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Heidbreder.

Iowa Code section 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".

871 IAC 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.

Ms. Heidbreder was motivated to obtain full-time employment, conducted an active and earnest search for new employment while her claim for benefits was active, and made herself available for suitable work when it became available. Ms. Heidbreder met the work ability and work availability requirements of Iowa Code section 96.4(3) from the date of separation, May 6, 2010, through the week ended May 22, 2010, and was eligible for unemployment insurance benefits, provided she was otherwise eligible. Effective May 23, 2010, Ms. Heidbreder was again fully employed, no longer met the work availability requirements of Iowa code section 96.4(3), and was no longer eligible for benefits.

DECISION:

The Agency representative's June 16, 2010, reference 01, decision is reversed. The claimant voluntarily quit the employment for good cause attributable to the employer. 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 and available for work from the time of the May 6, 2010 separation through the week that ended May 22, 2010, and was eligible for benefits for that period, provided she was otherwise eligible.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw