

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTINE A CURTIS-KLUG
Claimant

APPEAL NO. 09A-UI-00992-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES STAFFING SERVICES INC
Employer

OC: 12/07/08 R: 02
Claimant: Respondent (1)

Iowa Code section 96.5(1)(j) – Separation From Temporary Employment
Iowa Code section 96.5(3)(A) – Refusal of Suitable Work
Iowa Code section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 14, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on February 10, 2009. Claimant Christine Curtis-Klug participated. Amy MacGregor, Human Resources Manager, represented the employer. The parties waived formal notice on the issues of whether the claimant refused an offer of suitable employment and whether the claimant has been able and available for work.

ISSUE:

Whether Ms. Curtis-Klug's separation from a temporary employment assignment was for good cause attributable to the employer.

Whether Ms. Curtis-Klug's separation from a temporary employment agency was for good cause attributable to the employer.

Whether Ms. Curtis-Klug refused an offer of suitable work from the temporary employment agency.

Whether Ms. Curtis-Klug has been able to work and available for work since completing her most recent assignment with the temporary employment agency.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a staffing agency. Christine Curtis-Klug established her employment relationship with DES Staffing on May 9, 2008 and worked in three temporary employment assignments. The most recent assignment was a full-time, temporary assignment at Excel Marketing in Des Moines. The assignment hours were 4:00 p.m. to 12:30 a.m., Sunday through Thursday. Ms. Curtis-Klug relied on a housemate for transportation to and from the assignment. The

assignment started in August 2008 and ended on October 13, 2008, when the client business no longer needed Ms. Curtis-Klug's services.

On October 13, Ashley Leydens, Placement Specialist at DES Staffing, notified Ms. Curtis-Klug that the assignment at Excel Marketing was ending that day. During the same telephone conversation, Ms. Leydens offered Ms. Curtis-Klug a new assignment at Kemins in Des Moines. Ms. Leydens told Ms. Curtis-Klug that the assignment would be full-time, first shift, Monday through Friday, and would pay \$8.50 per hour. The wage was the same wage Ms. Curtis-Klug had been receiving at the Excel Marketing assignment. Ms. Curtis-Klug refused the assignment due lack of transportation to and from the offered assignment.

At the time Ms. Curtis-Klug established her employment relationship with DES Staffing, she and the employer executed an end-of-assignment notification agreement. Under the agreement, Ms. Curtis-Klug was required to contact the employer within three working days of the end of an assignment to indicate that she was available for a new assignment. The policy was contained on separate document that contained only the policy. Ms. Curtis-Klug signed the policy and received a copy of the policy.

Ms. Curtis-Klug's car became inoperable in September and was inoperable until October 20, 2008. The car again became inoperable at the beginning of November 2008, when the brakes went out, but was fixed over the weekend.

Ms. Curtis-Klug established a claim for unemployment insurance benefits that was effective December 7, 2008. To date, Ms. Curtis-Klug has received benefits totaling \$1,350.00 for the period of December 7, 2008 through February 7, 2008.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

The weight of the evidence indicates that Ms. Curtis-Klug's separation from the assignment at Excel Marketing was in the form of a lay-off. As such, the separation from the assignment did not disqualify Ms. Curtis-Klug for unemployment insurance benefits. See Iowa Code section 96.5(2)(a) and (1); see also 871 IAC 24.1(113)(a). 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. 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.

871 IAC 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 weight of the evidence in the record indicates that the employer's end-of-assignment notification policy complied with the requirements of Iowa Code section 96.5(1)(j). The weight of the evidence indicates that Ms. Curtis-Klug was in contact with the employer on October 13, 2008, the very day the assignment at Excel Marketing ended. Thus, Ms. Curtis-Klug satisfied the time requirement of Iowa Code section 96.5(1)(j). The weight of the evidence indicates that Ms. Curtis-Klug was in fact seeking reassignment. Accordingly, the separation from the temporary employment agency that occurred on October 13, 2008 would not disqualify Ms. Curtis-Klug for unemployment insurance benefits. The separation was for good cause attributable to the employer. The employer may be charged for benefits paid to Ms. Curtis-Klug.

A person who refuses to accept an offer of suitable work without good cause is disqualified for benefits until the person has worked in and earned ten times her weekly benefit amount from insured work. See Iowa Code section 96.5(3)(b). The evidence must establish a bona fide offer of employment was made. See 871 IAC 24.24(1). A lack of transportation to the employment constitutes good cause for refusing offered employment, but calls into question the claimant's availability for work, which must be evaluated. See 871 IAC 24.24(8). Both the offer of work and the claimant's refusal must occur within the claimant's benefit year before the refusal may serve as a basis for disqualification for benefits. See 871 IAC 24.24(8).

The weight of the evidence indicates that the sole reason for Ms. Curtis-Klug's decision to refuse the offered assignment at Kemins was her lack of transportation to the assignment. Thus, Ms. Curtis-Klug had good cause for refusing the assignment. In addition, the evidence in the record establishes that the offer of employment and the refusal occurred when Ms. Curtis-Klug did not have an active claim for unemployment insurance benefits, since Ms. Curtis-Klug did not establish her claim until December 7, 2008. The refusal of the assignment would not disqualify Ms. Curtis-Klug for unemployment insurance benefits.

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.

The weight of the evidence in the record indicates that Ms. Curtis-Klug's transportation issues were resolved prior to the effective date of her claim for unemployment insurance benefits. Accordingly, the evidence indicates that Ms. Curtis-Klug has been available for work since she established her claim for benefits. Ms. Curtis-Klug is eligible for benefits, provided she is otherwise eligible.

DECISION:

The Agency representative's decision dated January 14, 2009, reference 01, is affirmed. The claimant's separation from her temporary work assignment and separation from the temporary employment agency on October 13, 2008 was for good cause attributable to the employer. The claimant's refusal of a new assignment was for good cause, occurred when the claimant did not have an active claim for benefits, and did not disqualify her for benefits. The claimant has been able and available for work since the effective date of her claim. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw