

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

CAROL S WILD
7171 CAVES RD
MAQUOKETA IA 52060

OPERATION NEW VIEW
ATTN – EXECUTIVE DIRECTOR
1473 CENTRAL AVE
DUBUQUE IA 52001-4853

Appeal Number: 04A-UI-04221-DT
OC: 03/14/04 R: 04
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

871 IAC 24.26(22) – Temporary Employment

STATEMENT OF THE CASE:

Operation New View (employer) appealed a representative's April 9, 2004 decision (reference 02) that concluded Carol S. Wild (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 11, 2004. The claimant participated in the hearing. Joy Davis appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The employer is a community action agency providing services to low-income and elderly clients in a three-county area that hires temporary seasonal workers each year to assist in its energy assistance program. The claimant has worked seasonally for the employer since 1998. Her most recent employment began October 1, 2003. She worked full time as a temporary intake worker in the energy assistance program. Her last day of work in that employment was February 13, 2004. On January 30, she had been given a two-week notice that her employment would end February 13 due to a slow down in the workload and funding restrictions. The claimant's work in prior years had ended approximately the same time. In accepting the position in October 2003, she had signed an agreement that provided in part that "when your temporary employment ends it will be considered a voluntary separation."

REASONING AND CONCLUSIONS OF LAW:

The essential question in this case is whether there was a disqualifying separation from employment.

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.

871 IAC 24.26(22) 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:

(22) The claimant was hired for a specific period of time and completed the contract of hire by working until this specific period of time had lapsed. 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 employees shall be considered to have voluntarily quit employment.

The employer hired the claimant on a temporary basis. A "contract of hire" is merely the terms of employment agreed to between an employee and an employer, either explicitly or implicitly; for purposes of unemployment insurance benefit eligibility, a formal or written employment agreement is not necessary for a "contract of hire" to exist, nor is it pertinent that the claimant remained an "at will" employee. While the exact period of time for her employment was not specified at the time of hire, it was specified that it was "seasonal," with the season being the winter heating season in which energy assistance was needed. The precise period of the employment was set by the employer by its January 30, 2004 notice indicating the employment would end on February 13, 2004. The claimant completed the agreement of hire by working until that time had elapsed. Eligibility for unemployment insurance benefits is not conditioned on whether the employment was permanent or temporary, or whether the claimant as a temporary

employee was eligible for employment benefits otherwise provided by the employer to its permanent employees.

871 IAC 24.25 provides that, 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 from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant did not exhibit the intent to quit and did not act to carry it out. The claimant did not have the intent to sever the employment relationship necessary to treat the separation as a "voluntary quit" for unemployment insurance purposes. The fact that the agreement prepared by the employer and signed by the claimant stated that the ending of the employment would be considered a voluntary separation does not make it so for purposes of unemployment insurance benefit eligibility – benefits “are not determinable by the course of semantic gymnastics.” Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's April 9, 2004 decision (reference 02) is affirmed. The claimant's separation was not a voluntary quit but was the completion of a temporary agreement of hire. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

ld/kjf