

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY K MARTIN-NELSON
Claimant

APPEAL NO. 17A-UI-06811-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

R J PERSONNEL INC
Employer

**OC: 06/04/17
Claimant: Respondent (1)**

871 IAC 24.1(113)a – Separations From Employment
Section 96.5-1 – Voluntary Leaving – Layoff
Section 96.5-1-j – Separation from Temporary Employer
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

R J Personnel (employer) appealed a representative's June 27, 2017, decision (reference 01) that concluded Kimberly Martin-Nelson (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 20, 2017. The claimant participated personally. The employer participated by Mike Thomas, Account Manager. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary employment service. The claimant was assigned to perform services from August 25, 2011, to June 7, 2013, and August 12, 2013, to May 26, 2017, for Muscatine Power and Water. The claimant received and delivered parts, weighed trucks, and watched the front gate. The claimant does not believe she signed a document indicating she was to contact the employer within three days following the completion of an assignment to request placement in a new assignment.

In May 2017, Muscatine Power and Water told the claimant they were downsizing and eliminating her position as of May 26, 2017. Unbeknownst to the employer at the time, Muscatine Power and Water offered her summer temporary work through the employer as a hydrant painter. The claimant refused the work from her employer's client because she thought it would hinder her ability to continue working a long-term, full-time job with her employer. On May 30, 2017, the claimant asked the employer for work but no work was available.

The claimant filed for unemployment insurance benefits with an effective date of June 27, 2017. The employer participated personally at the fact finding interview on June 26, 2017, by Lucas Jenson.

REASONING AND CONCLUSIONS OF LAW:

First, the administrative law judge concludes the claimant was not a temporary employee.

Iowa Code section 96.5(1)j provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

The claimant worked for a temporary employment firm but did not provide supplemental, seasonal, special assignment/project work or work during temporary shortages. She provided the day to day labor that Muscatine Power and Water needed to function. In short, the claimant was the employer's employee, contracted out to perform long-term work for Muscatine Power and Water. She was not a temporary employee and the separation does not fall under the statute for temporary employees.

The administrative law judge concludes the claimant was laid off due to a lack of work.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.1(113)a provides:

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

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) 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.

The employer laid the claimant off for lack of work on May 26, 2017, when the employer's client eliminated her position. The client requested continued work from the employer and none was available. When an employer suspends a claimant from work status, the separation does not prejudice the claimant. The claimant's separation was attributable to a lack of work by the employer. The claimant is eligible to receive unemployment insurance benefits for that period.

DECISION:

The representative's June 27, 2017, decision (reference 01) is affirmed. The claimant was laid off due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs