

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

YADIRA SALAMANCA
Claimant

APPEAL NO: 12A-UI-00600-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

OC: 12/04/11
Claimant: Appellant (2/R)

Iowa Code § 96.5(1)j – Completion of Temporary Job Assignment

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's January 9, 2012 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant responded to the hearing notice, but was not available for the hearing. A message was left on the claimant's cell phone to contact the Appeals Section immediately. Sarah Fiedler appeared on the employer's behalf.

After the hearing was closed and the employer had been excused, the claimant called the Appeals Section. She requested that the hearing be reopened. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUES:

Is there good cause to reopen the hearing?

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits or did the employer discharged her for reasons that constitute work-connected misconduct?

FINDINGS OF FACT:

The employer, a temporary staffing firm, assigned the claimant to an assignment on August 9, 2010. The claimant completed this assignment on December 6, 2011. The claimant timely notified the employer she had completed this assignment on December 6, 2011. When the employer asked the claimant if she was interested in another assignment, she indicated she was not interested at that time because she did not have a car.

The claimant established a claim for benefits during the week of December 4, 2011. The claimant contacted the employer on December 20 to ask the employer about a job because she was then available for work.

The claimant was called at 11:00 a.m. for the scheduled hearing. When she did not answer, a message was left for her to contact the Appeals Section immediately. The call was recorded. The claimant's cell phone went to voice mail and the claimant did not realize a voice mail message had been left until 11:30 a.m.

The voice message left for the claimant at 11:00 a.m. did not come in on her cell phone until around 11:30 a.m. After her cell phone indicated she had received a voice message, she listened to it and immediately contacted the Appeals Section. The claimant had not called earlier because she was waiting to be called for the hearing. The claimant made a request to reopen the hearing.

REASONING AND CONCLUSIONS OF LAW:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c).

The claimant chose to be contacted for the hearing on her cell phone. The administrative law judge recognizes that many people only use cell phones. While cell phones are wonderful technological devices, they have some limitations. Limitations may be the result of the carrier, the service connection or the phone. Sometimes calls go to voice mail instead of ringing through as an in-coming call. Usually, a cell phone user immediately knows when a voice mail message comes in, but there are times voice messages are delayed. Since the claimant was called at 11:00 a.m. and she did not receive this voice message until 11:30 a.m., her cell phone system did not put the voice mail message on her phone immediately.

When the claimant called the Appeals Section to provide her phone number before the scheduled hearing, she received information that if she had not been called by 11:05 a.m. she needed to call the Appeals Section to find out why she had not been called. The claimant did not follow this direction. Even if she did not receive directions to call the Appeals Section by 11:05 a.m. if she had not received a call to participate in the hearing, she failed to act reasonably when she did not call until approximately 11:30 a.m. As a result, the claimant did not establish good cause to reopen the hearing.

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. An individual who is a temporary employee of a temporary employment firm may be disqualified from receiving unemployment insurance benefits if the individual does not notify the temporary employment firm within three working days after completing the job assignment in an attempt to obtain another job assignment. To be disqualified from receiving benefits, at the time of hire the employer must advise the individual in writing of the three-day notification rule and that the individual may be disqualified from receiving unemployment insurance benefits if she fails to notify the employer. Iowa Code § 96.5(1)j.

The facts establish the claimant satisfactorily completed a job assignment on December 6, 2011. She timely notified the employer that she had completed the assignment. The employer understood the claimant was not immediately available for another assignment because she did not have a vehicle. On December 20, the claimant again contacted the employer to report she

was available and asked about job assignments. The employer has not assigned the claimant a job since December 20, 2011. Under these facts, the claimant's employment separation occurred after she successfully finished an assignment. She properly notified the employer that she had completed the assignment. Even though the claimant was not immediately available for another job, she contacted the employer again on December 20 to report she was again available and wanted another assignment. Based on these facts the claimant's employment separation does not disqualify her from receiving benefits as of December 4, 2011.

An issue of whether the claimant was available to work December 4 through 20 must be remanded to the Claims Section to determine.

DECISION:

The claimant's request to reopen the hearing is denied. The representative's January 9, 2012 determination (reference 01) is reversed. The claimant successfully completed a job assignment and timely informed the employer the assignment had been completed. As of December 4, 2011, the claimant is qualified to receive benefits based on the reasons for her employment separation. The employer's account is subject to charge. An issue of whether the claimant was available to work December 4 through 20 is **Remanded** to the Claims Section to investigate and determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css