

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

DAVID W BRYANT
325 OLIVER ST
WATERLOO IA 50703

KELLY SERVICES INC
999 WEST BIG BEAVER RD
TROY MI 48084-4716

Appeal Number: 06A-UI-01114-L
OC: 12-18-05 R: 03
Claimant: Appellant (2)

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)

Iowa Code § 96.5(1)j – Voluntary Leaving – Temporary Employment

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the January 23, 2006, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on February 15, 2006, in Waterloo, Iowa. Claimant did participate. Employer did participate through Amy Becker. Employer's Exhibit 1 was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time temporary laborer assigned at Bossard from March 27, 2005 through November 14, 2005 when he quit the assignment.

On November 14 claimant reported to Shannon Sworeberry, supervisor at Brossard, who told claimant to go to the tote line, where he had not worked before. Claimant advised Sworeberry he has a sinus allergy condition that would not allow him to wear the foam earplugs. Sworeberry sent him to his supervisor, Martin, and claimant explained the situation again. Martin said he did not care about the concern, the tote line was the only job available to him, no other type of ear protection was available, and to "just deal with it." Employer's handbook allows employees to quit assignments that are detrimental to their health. Martin swore at claimant and claimant asked him not to "cuss" at him, to calm down, and act professionally. Mike Harding, Denelius Nesby, and two other supervisors were within hearing distance. Claimant asked to use the phone to get a ride and then wanted to wait inside because it was raining hard. Martin argued with him and allowed him to wait inside after talking to someone else.

Claimant called Kelly Services from his cell phone on November 14 at 6:43 p.m. and again on November 15 at 12:37 p.m. and 1:47 p.m. and left messages at 319-232-1622. There was no return call or message from Kelly Services. He updated his phone number with Kelly in October, and Kelly has record of claimant's old phone number, which is now disconnected, his grandmother's home phone number (she is reliable about passing along messages to claimant) and his current cell phone number from his mother's friend's plan.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment with good cause attributable to the employer.

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 purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of the temporary assignment. In this case, the employer had notice of the claimant's availability, because he did advise employer of the end of the assignment due to employer's or the assignment's inability or unwillingness to accommodate his medical condition with external hearing protection. He also attempted to communicate his availability three times within two days of the end of the assignment. That employer did not thereafter communicate with claimant indicates there was no additional work available. Benefits are allowed.

DECISION:

The January 23, 2006, reference 02, decision is reversed. The claimant's separation from employment was attributable to the employer. The claimant had adequate contact with the employer about his availability as required by statute. Benefits are allowed, provided the claimant is otherwise eligible.

dml/kjw