

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAKIRA PALMARES

Claimant

APPEAL NO: 16A-UI-07799-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES USA LLC

Employer

OC: 05/29/16

Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 16, 2016, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 3, 2016. The claimant participated in the hearing. Robin McCroskey, Senior Staffing Recruiter, participated in the hearing on behalf of the employer. Department's Exhibit D-1 was admitted into evidence.

ISSUE:

The issues are whether the claimant's appeal is timely and whether the claimant voluntarily left her employment by failing to call the employer or report for work for three consecutive workdays in violation of the employer's policy.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last-known address of record on June 16, 2016. The decision did not contain the claimant's apartment number and consequently she did not receive the decision until July 11, 2016. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by June 27, 2016. The appeal was not filed until July 14, 2016, because the claimant did not receive it until July 11, 2016. Under these circumstances, the administrative law judge must conclude the claimant's appeal is timely.

The claimant was employed as a full-time customer service representative for Kelly Services last assigned to ADP from October 15, 2015 to May 17, 2016. The employer determined she voluntarily quit her job following no-call no-show absences that occurred May 12 through May 17, 2016.

The claimant was absent January 26, February 5, February 12, February 23, February 24, March 4, March 11, March 22, March 23, March 30, March 31, April 18, April 21, April 25, May 6, May 9, and May 12 through May 17, 2016. She was tardy February 29, left early March 2, and was tardy March 9, 2016. She did not report her absences to the employer

February 23, February 24, May 12, May13, May 16 and May 17, 2016. The client, ADP, requested the claimant be removed from the assignment. After reviewing her attendance and failure to call and report her absences, the employer determined she voluntarily left her employment by abandoning her job May 17, 2016.

The employer counseled the claimant about its call in procedure for reporting absences February 24, February 26, February 29, and March 22, 2016. Under the employer's policy, three no-call no-show absences is considered a voluntary leaving of employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.25(4) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

While the claimant was ill on several occasions, especially toward the end of her employment, she was not hospitalized during the last four days she was absent without calling the employer. The claimant was aware she was required to notify the employer of her absences regardless of the reason. If she was truly unable to do so she should have asked her boyfriend or cousin to inform the employer of her absences. It is not unreasonable for an employer to expect its employees to call each day if they are unable to report for work. The claimant did not report her absences to the employer February 23, February 24, May 12, May 13, May 16 or May 17, 2016. Inasmuch as the claimant failed to report for work or notify the employer for three consecutive work days in violation of the employer's policy, she is considered to have voluntarily left her employment without good cause attributable to the employer. Therefore, benefits are denied.

DECISION:

The June 16, 2016, reference 01, decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs