

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KRISTEN TURNIS**

Claimant

**APPEAL NO. 11A-UCFE-00032-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MIDWEST PROFESSIONAL STAFFING LLC**

Employer

**OC: 11/21/10**

**Claimant: Respondent (2/R)**

Iowa Code § 96.5-1 - Voluntary Quit

Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Midwest Professional Staffing, LLC (employer) appealed an unemployment insurance decision dated July 5, 2011, reference 05, which held that Kristen Turnis (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 4, 2011. The claimant participated in the hearing. The employer participated through Rachel Mikel, staffing specialist, and Angela Essink, office coordinator. Employer's Exhibits One and Two were admitted into evidence. 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:**

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a temporary clerical assistant March 7, 2011 through May 19, 2011. She was placed on an assignment with DeWaay Financial that was a temp-to-hire position. The claimant contacted the employer on May 18, 2011 stating that she was not happy with her position, she was not being utilized, and she did not think the assignment would have lasted as long as it had. She believed the position should be part-time instead of full-time. The employer contacted the client who was unaware of the claimant's feelings and the client also indicated the claimant was not completing her assigned work.

The employer contacted the claimant and asked what type of work she wanted to do so they could place her on a different assignment. The employer asked the claimant if she wanted a receptionist position, but the claimant said no. She did not want a different assignment, because she did not know what she wanted to do. The claimant also mentioned unemployment benefits and the fact that she planned on moving soon. The employer contacted the client and

advised that the claimant did not want to talk with Angela Diaz. Ms. Diaz requested the employer take the claimant off that assignment and when the employer could not reach the claimant, a voice mail message was left for her.

The claimant filed a claim for unemployment insurance benefits effective November 21, 2010 and has received benefits after the separation from employment.

**REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits. She is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

The employer had no other option than to remove the claimant from the client to whom the claimant was assigned, since she was not happy and was not completing the work she was given. However, the claimant did not want another assignment. In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit by telling the employer she did not want another assignment. She carried out that intent when she did not contact the employer to request additional work.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has not satisfied that burden and benefits are denied.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

**DECISION:**

The unemployment insurance decision dated July 5, 2011, reference 05, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw