

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TERESA L SLADEK
Claimant

KELLY SERVICES USA LLC
Employer

APPEAL 17A-UI-08059-LJ
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/02/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 31, 2017 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit her temporary employment by failing to report to her employer within three working days of her last assignment ending. The parties were properly notified of the hearing. An in-person hearing was held in Cedar Rapids, Iowa, on September 27, 2017. The claimant, Teresa L. Sladek, participated and was represented by Ellen Pepple and Mealea Thou, Clinical Law Program law students, and Professor John Allen of the University of Iowa College of Law Clinical Law Program. The employer, Kelly Services USA, L.L.C., participated through Staci Payne, Senior Account Talent Manager. Claimant's Exhibit A was received and admitted into the record without objection.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Did claimant quit by not reporting for additional work assignments within three business days of the end of the last assignment?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a temporary employee, from January 5, 2016, until June 28, 2017, when she quit. Most recently, claimant was assigned as a customer care representative with ACT. During this assignment, claimant had issues getting her telephone call times down to the brief five or six minutes the client expected. She worked with trainers, with an ACT supervisor, and with Payne on this issue. Payne told claimant she needed to improve, and also encouraged her by telling her the employer would find claimant additional work if the ACT assignment did not work out. She last reported to this assignment on June 27, 2017. On June 28, Payne called claimant and notified her that her assignment had ended due to claimant's job performance and the excessive length of her calls. Claimant became upset and loudly told Payne this was not fair. Payne told claimant it was a done deal and explained that if she wanted further details, she would need to talk to someone at ACT. Claimant again expressed

that it was not fair and she hung up on Payne. Claimant did not ask for an additional assignment during this conversation, and Payne did not offer any additional work to claimant.

On July 31, claimant contacted Payne again. She apologized for hanging up on Payne during her last conversation, and she requested additional work. Claimant indicated she was available for any shift, so long as the assignment was not production work. Claimant has numerous ailments and restrictions that prohibit her from working in physical labor. Payne told claimant that the summer months were slow and that she had concerns about assigning claimant again, as claimant had hung up on her before. Additionally, Payne told claimant she could no longer work customer service at ACT due to her call times. Payne encouraged claimant to go onto the employer's website to access job opportunities at locations other than ACT. Claimant acknowledges that she received a copy of the employer's three-day policy instructing her to request an additional assignment within three business days of a current assignment ending.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation was without good cause attributable to the employer. Benefits are withheld.

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 Code § 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. (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.

Iowa Admin. Code r. 871-24.26(15) provides:

Employee of temporary employment firm.

a. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm within three days of completion of an employment assignment and seeks reassignment under the contract of hire. The employee must be advised by the employer of the notification requirement in writing and receive a copy.

b. The individual shall be eligible for benefits under this subrule if the individual has good cause for not contacting the employer within three days and did notify the employer at the first reasonable opportunity.

c. Good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business; blinding snow storm; telephone lines down; employer closed for vacation; hospitalization of the claimant; and other substantial reasons.

d. Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer, or any other currently acceptable means of communications. Working days means the normal days in which the employer is open for business.

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for *and seeking work* at the end of the temporary assignment. While the administrative law judge understands that claimant had never been expected to strictly comply with the three-day policy, this separation from employment is different from claimant's previous separations. During her previous separations from temporary assignments, the employer offered to seek additional work for her. That was not the case during her separation on June 28. At no point during the June 28 conversation did the claimant ask for or the employer offer any additional work. Further, claimant abruptly ended the conversation by hanging up on the employer, and she made no additional contact for approximately four weeks. The employer had no reason to believe that claimant was seeking an additional assignment. Rather, the administrative law judge believes that claimant hanging up on the employer and ceasing contact for multiple weeks demonstrates an intent to end her employment relationship with the temporary staffing agency.

Iowa Admin. Code r. 871-24.25 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: ...

(28) The claimant left after being reprimanded.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998). Here, claimant ended her employment with Kelly Services after receiving notice that her assignment at ACT had ended. While this was understandably upsetting, the average person in claimant's situation would not have felt similarly compelled to quit her employment. A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). Claimant hung up on the employer and did not reach out for multiple weeks to notify the employer if she was interested in any additional work. Claimant's end of employment was without good cause attributable to the employer. Benefits are withheld.

DECISION:

The July 31, 2017 (reference 01) unemployment insurance decision is affirmed. Claimant separated from 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.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn