

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERESA A WOOD
Claimant

APPEAL NO. 07A-UI-07640-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES INC
Employer

**OC: 07/01/07 R: 02
Claimant: Appellant (1)**

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Teresa Wood filed a timely appeal from the July 31, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 23, 2007. Ms. Wood participated. Alissa Finch, Senior Staffing Specialist represented the employer. Exhibits One and A were received into evidence.

ISSUE:

Whether the claimant's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Teresa Wood was employed by Kelly Services temporary employment agency on a full-time basis until May 18, 2007, when she voluntarily quit. Ms. Wood's final assignment was a clerical position at Noridian. The assignment at Noridian had started on February 14, 2007 and ended when Ms. Wood quit because she was not allowed to smoke cigarettes on her paid breaks. Noridian contracts with the State of Iowa to process Medicaid data. Because of the contract with the State of Iowa, Noridian is required to restrict tobacco smoking on its property. Noridian's own tobacco policy goes further than the state requirement and prohibits any tobacco use during any company-paid time, including paid breaks. Noridian instituted its tobacco policy well before Ms. Wood's assignment commenced.

Noridian Supervisor Krista Schultz supervised Ms. Wood's work at Noridian. At the time Ms. Wood commenced the assignment, Ms. Schultz reviewed with Ms. Wood the tobacco policy that prohibited Ms. Wood from smoking on any paid breaks. On March 30, Ms. Wood violated the tobacco policy. Ms. Schultz counseled Ms. Wood about the policy violation and reported the matter to Kelly Services Senior Staffing Specialist Alissa Finch, who also counseled Ms. Wood regarding the violation. On May 18, Ms. Schultz again observed Ms. Wood violating Noridian's tobacco policy and reported the matter to Ms. Finch at Kelly Services, who again counseled Ms. Wood. Ms. Wood believed that she was being singled out and that other Noridian supervisors intentionally ignored their subordinates' violation of the tobacco policy. However, at the end of March, Ms. Schultz had made it clear to Ms. Wood that she did not intend to ignore violations of the tobacco use policy and would treat Ms. Wood and other subordinates the same.

Ms. Wood elected to quit the employment rather than comply with the tobacco policy. Kelly Services and Noridian continued to have work available to Ms. Wood in the assignment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Ms. Wood quit because she was dissatisfied with the work environment. The evidence in the record further indicates that Ms. Wood quit in response to being reprimanded. Quits for either reason are presumed to be without good cause attributable to the employer. See 871 IAC 24.25(21) and (28).

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Wood voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Wood is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Wood.

DECISION:

The Agency representatives July 31, 2007, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in a been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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