

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RANON L ROBINSON
Claimant

APPEAL NO. 17A-UI-04318-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROBERT HALF CORPORATION
Employer

OC: 03/26/17
Claimant: Appellant (4)

Iowa Code Section 96.5(1) – Recall and Layoff
Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Ranon Robinson filed a timely appeal from the April 18, 2017, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Ms. Robinson had voluntarily quit on March 22, 2017 without good cause attributable to the employer. After due notice was issued, a hearing was held on May 4, 2017. Ms. Robinson participated. Rachel Van Fossen represented the employer. Exhibits A and B were received into evidence.

ISSUE:

Whether the claimant separated from an employment for a reason that disqualifies her for benefits or that relieves the employer's account of liability for benefits.

Whether the claimant was able to work and available for work within the meaning of the law during the six-week period of March 26, 2017 through May 6, 2017.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Robert Half Corporation is a temporary employment agency. Ranon Robinson has been employed by Robert Half Corporation on-and-off since 2009. Ms. Robinson suffers from multiple health issues that impact her ability to work and her availability for work. These health issues include diverticulitis, rheumatoid arthritis, a lower back injury, asthma and unspecified stomach issues. Ms. Robinson avoids work that requires lifting or operating machinery. Ms. Robinson avoids work that she deems too stressful. When Ms. Robinson is employed, she generally performs clerical and/or customer service work. At the beginning of March 2017, Ms. Robinson completed a three-month assignment. Ms. Robinson then established an "additional" claim for unemployment insurance benefits as part of a claim year that started in March 2016. In connection with this additional claim, Ms. Robinson made weekly claims for the weeks that ended March 4 through March 25, 2017, at which time the claim year expired.

Ms. Robinson established a new original claim for unemployment insurance benefits that was effective March 26, 2017. Robert Half Corporation is the sole base period employer for purpose of that claim. The base period temporary work assignments were a combination of brief

assignments and assignments that lasted for months. The base period assignments were a combination of full-time and part-time assignments.

On March 21, 2016, Rachel Van Fossen, Staffing Manager at Robert Half Corporation, called Ms. Robinson and sent Ms. Robinson a text message regarding a potential assignment at a medical clinic. Ms. Van Fossen told Ms. Robinson that she had a possible part-time temporary front desk/clerical assignment opportunity that was moving quickly. Ms. Van Fossen told Ms. Robinson the assignment would pay \$10.00 per hour, which was less than Ms. Robinson had previously been making. Ms. Van Fossen told Ms. Robinson that the work hours in the prospective assignment would ordinarily be 7:30 a.m. to noon, Monday through Friday, but that Ms. Robinson would sometimes need to stay until 2:30 p.m. Ms. Van Fossen told Ms. Robinson that the work would be customer service work and would involve greeting patients and setting patient appointments. Ms. Van Fossen told Ms. Robinson that the temporary assignment had the potential to turn into a long-term, temp-to-hire assignment. Ms. Van Fossen told Ms. Robinson that if she was interested in pursuing the assignment, Ms. Van Fossen would schedule a "working" interview for the next day so that Ms. Robinson could meet the supervisor, Jacklyn. Ms. Robinson acknowledged that she needed a job and agreed to appear at the prospective workplace at 9:30 a.m. the next day for the working interview that was scheduled to last until noon. At the time Ms. Robinson agreed to the interview, the mutual understanding was that after the working interview, Jacklyn would communicate with Ms. Van Fossen to indicate whether she wanted Ms. Robinson to return for additional work. Ms. Robinson went to the interview with the knowledge that Robert Half Corporation would pay her \$10.00 per hour to participate in the interview.

On March 22, 2017, Ms. Robinson appeared for the interview as instructed. The supervisor, Jacklyn initially had Ms. Robinson observe the receptionist perform the receptionist duties that would be part of the proposed assignment. Jacklyn then interviewed Ms. Robinson. When Jacklyn was done interviewing Ms. Robinson, Jacklyn had Ms. Robinson spend additional time observing the receptionist perform the receptionist duties. The clinic was slow while Ms. Robinson was observing the receptionist. Ms. Van Fossen and Jacklyn had intentionally scheduled the "working" interview for a time when the clinic would be slow. When noon arrived, Ms. Robinson left the prospective workplace. At the time Ms. Robinson left the prospective workplace, Jacklyn had said nothing to Ms. Robinson to indicate that she would be asking Robert Half Corporation to have Ms. Robinson return.

Immediately after Ms. Robinson left the prospective workplace, she telephoned Ms. Van Fossen. Ms. Van Fossen asked Ms. Robinson how the interview had gone. Ms. Robinson said she did not know. Ms. Robinson told Ms. Van Fossen that she was not interested in the particular assignment, had not cared for the work environment, and desired a full-time assignment that could potentially lead to permanent employment. Ms. Van Fossen told Ms. Robinson that she wanted Ms. Robinson to be certain that she was not interested in the assignment. Ms. Van Fossen told Ms. Robinson that if she elected not to return to the particular assignment, it would be "off the table" for Ms. Robinson. At the time Ms. Robinson spoke with Ms. Van Fossen, Jacklyn had not contacted Ms. Robinson to indicate whether she wanted Ms. Robinson to return to the workplace. At no time did Jacklyn or Ms. Van Fossen actually offer the assignment to Ms. Robinson. Following this telephone call, Ms. Van Fossen sent Ms. Robinson a text message stating that she would continue to look for an assignment for Ms. Robinson. On March 23, Ms. Van Fossen left a voicemail message for Ms. Robinson in which she again stated that she would continue to look for an assignment for Ms. Robinson.

After Ms. Robinson established the unemployment insurance claim that was effective March 26, 2017, she continued to make weekly claims through benefit week that ended May 6, 2017. On May 8, 2017, Ms. Robinson accepted a full-time work assignment that Ms. Van Fossen had helped her obtain. During the weeks that ended April 1, Ms. Robinson applied for a job at American Republic and spoke with Robert Half Corporation about a potential assignment at

Athene. During the week that ended April 8, Ms. Robinson applied for a lab assistant job with the City of Des Moines and inquired at Robert Half Corporation regarding a possible assignment at Wells Fargo. During the week that ended April 15, Ms. Robinson applied for a job at American Equity and spoke with Robert Half Corporation about a second Wells Fargo position. During the week that ended April 22, Ms. Robinson inquired further about a Wells Fargo fraud position that had been one of the two Wells Fargo positions she had pursued. Ms. Robinson was able to set up an interview for the Wells Fargo position to take place the following week. Ms. Robinson did not apply for any other employment or make any other job contacts during the week that ended April 22. During the week that ended April 29, 2017, Ms. Robinson attended a job interview at Wells Fargo, but did not otherwise engage in a work search. Ms. Robinson did not apply for work during the week that ended May 6, 2017, while she waited to start the assignment at Wells Fargo on May 8.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

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(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 evidence in the record establishes both a recall and a layoff on March 22, 2017. On that day, Robert Half Corporation, recalled Ms. Robinson to the employment with Robert Half Corporation for the limited purpose of having her participate in a 2.5 hour interview with a prospective client regarding a *prospective* assignment. Ms. Robinson appeared as instructed and participated in the interview as instructed. Ms. Robinson stayed until the appointed time for her departure. The so-called working interview was an interview only, not a temporary employment work assignment within the meaning of the law. Robert Half Corporation did not offer Ms. Robinson an assignment at the medical clinic. The supervisor at the medical clinic did not offer Ms. Robinson an assignment. Ms. Robinson did not perform any work on behalf of the medical clinic on March 22. The purpose of the interview was to allow the client business an opportunity to determine whether it wanted to have Ms. Robinson perform work in a temporary employment work assignment. Ms. Robinson did perform work on behalf of Robert Half Corporation on March 22 by appearing as directed for the interview. At the end of the interview, Ms. Robinson expressed disinterest in the particular prospective assignment. However, at that point, Robert Half Corporation had not heard anything from the client business regarding whether it even wanted to have Ms. Robinson perform work there. The evidence does not establish a voluntary quit from an assignment on March 22, 2017, because there was not yet an assignment to quit. The evidence also does not establish a voluntary quit from Robert Half Corporation on March 22, 2017. 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. At the same time Ms. Robinson expressed disinterest in the particular prospective assignment, she expressed, in good faith, an interest in continued employment with Robert Half Corporation and other assignments with Robert Half Corporation. Based on the March 22, 2017 layoff, Ms. Robinson would be eligible for benefits, provided she met all other eligibility requirements, and the employer's account could be assessed for those benefits.

The remaining questions are whether Ms. Robinson was able to work, available for work, and engaged in an active and earnest search for new employment during the period of March 26, 2017 through the benefit week that ended May 6, 2017.

Iowa Code § 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

After Ms. Robinson established the unemployment insurance claim that was effective March 26, 2017, she continued her claim through the benefit week that ended May 6, 2017. Despite her long-standing health issues, Ms. Robinson was able to perform work throughout that period. During the weeks that ended April 1, April 8, and April 15, 2017, Ms. Robinson was available for work and engaged in an active and earnest search for new employment. Ms. Robinson is eligible for benefits for those three weeks, provided she meets all other eligibility requirements.

Ms. Robinson did not demonstrate an active and earnest search for new employment during the weeks that ended April 22, April 29, and May 6, 2017 and, accordingly, also cannot be deemed to have made herself available for work during those weeks. During the week that ended

April 22, Ms. Robinson inquired about the fraud assignment at Wells Fargo, secured an interview for the following week, but did not otherwise look for work. During the week that ended April 29, 2017, Ms. Robinson attended a job interview at Wells Fargo, but did not otherwise engage in a work search. Ms. Robinson did not apply for work during the week that ended May 6, 2017, while she waited to start the assignment at Wells Fargo on May 8. Ms. Robinson is not eligible for benefits for the weeks that ended April 22, 2017, April 29, and May 6, 2017.

DECISION:

The April 18, 2017, reference 01, decision is modified as follows. The claimant was recalled on March 22, 2017 for the limited purpose of participating in an interview and was laid off that same day following the interview. The claimant did not separate from a temporary employment work assignment on March 22, 2017 because there was no such assignment in existence at the time. Based on the layoff, the claimant would be eligible for benefits, provided she meets all other eligibility requirements, and the employer's account may be assessed for those benefits.

During the weeks that ended April 1, April 8, and April 15, 2017, the claimant was able to work, available for work, and engaged in an active and earnest search for new employment. The claimant is eligible for benefits for those three weeks, provided she meets all other eligibility requirements.

During the weeks that ended April 22, April 29, and May 6, 2017, the claimant was able to work, but did not meet the work search or availability requirement. The claimant is not eligible for benefits for those three weeks.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs