

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KADIDJATOU DJERI SAMARI
Claimant

APPEAL 21A-UI-07348-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

QPS EMPLOYMENT GROUP INC
Employer

OC: 04/19/20
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-Finding Interview
PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

QPS Employment Group, the employer/appellant, filed an appeal from the March 4, 2021, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on May 20, 2021. The employer participated through Heather Wenthur, unemployment coordinator and Hannah Shoemaker, assistant branch manager. Ms. Samari participated and testified through an Ewe interpreter through CTS Language Link. Official notice was taken of the administrative record. Employer's Exhibit 1 was admitted into evidence.

ISSUE:

Did Ms. Samari quit by not reporting for additional work assignments within three business days of the end of the last assignment?
Was Ms. Samari overpaid benefits?
If so, should he repay the benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Samari was employed full-time as a packaging worker last assigned to Raining Rose. The assignment began on March 12, 2019.

On February 19, 2019, Ms. Samari acknowledged receiving the employer's 3-Day Reassignment Policy that required her to ask the employer for new work within three working days of his assignment ending. The employer's policy complies with the specific terms of Iowa Code § 96.5(1)j.

On, or about, April 17, 2020, Raining Rose had a meeting with employees one hour before the end of Ms. Samari's shift. Raining Rose informed employees that two people had tested positive for COVID-19. Raining Rose told employees that they should stay home for 14 days due to being exposed to someone who had tested positive for COVID-19. Ms. Samari and her co-workers then disinfected their work areas and left the job site.

Ms. Samari followed the instruction from Raining Rose and stayed home for 14 days, from April 20, 2020 through May 2, 2020. The employer testified that Ms. Samari did not need to self-quarantine since she was not "directly" exposed to someone who had tested positive for COVID-19.

Ms. Samari assumed that the employer would call her after the 14 days. The employer did not call Ms. Samari. Ms. Samari called the employer on May 4, 2020 and told the employer that she would not attend work that day because her child was sick but that she would attend work the next day. The employer told Ms. Samari that her employment was over because of several days of No-Call/No-Shows. Ms. Samari understood the employer to say that they would reassign her to a new job. Ms. Samari did not call the employer back because she assumed they would call her with the new assignment. In the hearing, the employer denied telling Ms. Samari that they would reassign her to a new job. The employer did not contact Ms. Samari after May 4, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Samari's separation from the employment was with good cause attributable to the employer.

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 lettered paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their work force 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:

Separation because of illness, injury, or pregnancy. *Nonemployment related separation*. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how the administrative law has resolved the disputed factual issues in this case. The administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using his own common sense and experience.

In this case, Ms. Samari following the instruction from Raining Rose and stayed home for 14 days because she was exposed to someone who had tested positive for COVID-19. Ms. Samari contacted the employer within three working days of learning that her assignment had ended. 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. Ms. Samari did that. Benefits are allowed.

Since Ms. Samari is eligible for benefits, the issues of repayment and chargeability are moot.

DECISION:

The March 4, 2021, (reference 01) unemployment insurance decision is affirmed. Ms. Samari's separation from employment was attributable to the employer. Benefits are allowed, provided she is otherwise eligible.



Daniel Zeno
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May 28, 2021
Decision Dated and Mailed

dz/kmj