

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES M DAVIS**  
Claimant

**APPEAL NO. 13A-UI-04562-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LABOR READY MIDWEST INC**  
Employer

**OC: 01/27/13**  
**Claimant: Respondent (4)**

Section 96.5(1)(a) – Voluntary Quit to Accept Other Employment  
Section 96.4(3) – Temporarily Unemployed

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the March 25, 2013, reference 03, decision that allowed benefits in connection with a purported February 28, 2013 separation from Labor Ready Midwest, Inc. After due notice was issued, a hearing was held on May 22, 2013. Claimant James Davis participated. Heidi White represented the employer. Exhibits One and Two were received into the record. The administrative law judge took official notice of the agency's administrative record of wages reported for or by the claimant and benefits disbursed to the claimant.

**ISSUES:**

Whether Mr. Davis separated from Labor Ready Midwest for a reason that disqualifies him for unemployment insurance benefits or that relieves the employer of liability for benefits.

Whether Mr. Davis has been able to work and available for work within the meaning of the unemployment insurance law since February 28, 2013.

Whether Mr. Davis was temporarily laid off during the time of his claim for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: James Davis established a claim for unemployment insurance benefits that was effective January 27, 2013. Workforce Development set Mr. Davis' weekly benefit amount at \$284.00. Mr. Davis received \$284.00 in benefits for the weeks ending February 2, 9, 16, 16, 23, March 2, 9, 16 and 23. Workforce Development authorized \$284.00 in benefits for the weeks ending March 30, April 6, 13 and 20, 2013, but withheld those benefits to recover a previous overpayment of benefits. The total amount of benefits authorized and credited to Mr. Davis for the period of January 27, 2013 through April 20, 2013 was \$3,408.00. During that same period, Mr. Davis only reported wages of \$30.00 for the week ending March 2, 2013.

Mr. Davis established the January 27, 2013 original claim in response to being temporarily laid off from his full-time employment at Whirlpool Corporation, employer account number 086656, effective January 27, 2013. Mr. Davis had started the full-time employment at Whirlpool Corporation on November 1, 2012. Mr. Davis' work hours at Whirlpool were 3:30 p.m. to midnight, Monday through Friday. After the January 27, 2013 layoff, Mr. Davis subsequently returned to the full-time employment at Whirlpool Corporation on April 15, 2013. Mr. Davis continues in that full-time employment at this time.

Prior to beginning the full-time employment with Whirlpool Corporation, Mr. Davis had established an employment relationship with Labor Ready Midwest, a temporary employment agency. At the time Mr. Davis started with Whirlpool, he was in a *full-time* temporary work assignment at Marriott in Coralville. Labor Ready had placed Mr. Davis in the assignment. The work paid \$7.25 per hour and involved washing dishes. On or about January 3, 2013, Mr. Davis told Labor Ready that he had found new employment, would no longer be available to work his regular hours in the temporary assignment, but would be available to work on his days off from Whirlpool. Mr. Davis continued to perform occasional work for the Marriott through Labor Ready. On January 31, 2013, Mr. Davis performed work for the Marriott.

Mr. Davis did not contact Labor Ready within three days of completing the January 31, 2013, one-day assignment at the Marriott. In March 2011, Mr. Davis had signed an Acknowledgment form that obligated him to make such contact with Labor Ready. The end-of-assignment notice requirement policy statement was presented as a stand-alone policy and contained a concise statement of the notice requirement. The employer provided Mr. Davis with a copy of the document he signed.

On February 28, 2013, a Labor Ready representative contacted Mr. Davis at 1:30 or 2:00 p.m. and offered him a shift at Marriott that was to start at 4:00 p.m. that day. Mr. Davis refused the assignment and said that he was unable to work the assignment that day.

On March 1, 2013, Mr. Davis accepted an assignment at the Marriott and performed four hours of work at the Marriott.

Mr. Davis performed additional work for the employer in a one-day assignment in mid-March.

#### **REASONING AND CONCLUSIONS OF LAW:**

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.

Iowa Code section 96.5(1)(a) provides as follows:

Causes for disqualification.

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:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, *and the individual performed services in the new employment*. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

[Emphasis added.]

The weight of the evidence establishes that Mr. Davis voluntarily quit the *full-time* temporary work assignment effective January 3, 2013 because he had accepted other, better employment with Whirlpool Corporation. The January 3, 2013 separation from the *full-time* employment with Labor Ready Midwest did not disqualify Mr. Davis for unemployment insurance benefits. However, it did relieve Labor Ready Midwest of liability for benefits based on the work that Mr. Davis had performed for Labor Ready up to that point.

Iowa Code section 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".

An individual shall be deemed *temporarily unemployed* if for a period, verified by the department, the individual is unemployed *due to a plant shutdown, vacation, inventory, lack of work or emergency* from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated. Iowa Code section 96.19(38)(c).

During the period of January 27, 2013 through April 4, 2013, Mr. Davis was attached to the full-time employment at Whirlpool Corporation, on temporary layoff from the full-time, permanent employment with Whirlpool Corporation, and was not obligated to search for other work or make himself available for other work. Thus, Mr. Davis' decision not to seek or accept particular shifts from Labor Ready during that period would have no impact on his eligibility for unemployment insurance benefits. Mr. Davis was eligible for benefits for the period of January 27, 2013 through the benefit week that ended April 20, 2013, provided he was otherwise eligible. Labor Ready's account will not be charged for benefits.

**DECISION:**

The agency representative March 25, 2013, reference 03, decision is modified as follows. The claimant voluntarily quit his full-time employment with Labor Ready Midwest, Inc., in January 2013 to accept other, better work with Whirlpool Corporation and performed work for the new employer. The claimant's voluntary quit from the full-time employment with Labor Ready was without good cause attributable to the employer. Labor Ready's account will not be charged for benefits. The voluntary quit to accept other employment did not disqualify the claimant for unemployment insurance benefits. The claimant is eligible for the benefits he received for the period of January 27, 2013 through the benefit week that ended April 20, 2013, provided he is otherwise eligible. During the period of January 27, 2013 through April 14, 2013, the claimant was attached to the full-time employment at Whirlpool, but temporarily laid off. The claimant was available for work with Whirlpool, but was not otherwise obligated during the period of temporary layoff to seek or accept other employment.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/css