

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VIRGILIO L VELEZ
Claimant

APPEAL NO. 16A-UI-10242-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING INC
Employer

OC: 10/18/15
Claimant: Respondent (4)

Iowa Code section 96.5(1)(a) – Voluntary Quit to Accept Other Employment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 12, 2016, reference 02, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged, based on an agency conclusion that the claimant's February 17, 2016 separation was for good cause attributable to the temporary employment firm. After due notice was issued, a hearing was held on October 4, 2016. Claimant Virgilio Velez participated. Colleen McGuinty represented the employer. The administrative law judge took official notice of the agency's record of benefits disbursed to the claimant and received Exhibit One into evidence.

ISSUE:

Whether the claimant separated from the employment for a reason that disqualifies him for unemployment insurance benefits or that relieves the employer of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: L A Leasing, Inc./Sedona Staffing is a temporary employment agency. Virgilio Velez commenced his employment relationship with Sedona Staffing in 2013. At the time of hire, the employer had Mr. Velez sign an Availability Statement – Three Day Notice Requirement. The employer provided Mr. Velez with a copy of the document he signed. The clear and concise policy statement obligated Mr. Velez to contact with the employer within three working days after completing a work assignment to request placement in a new assignment. The policy statement indicated that if Mr. Velez did not make the required contact, the employer would deem him to have voluntarily quit and that the failure to contact the employer could affect his unemployment insurance benefit eligibility. Mr. Velez last performed work for Sedona Staffing on February 17, 2016 and completed the one-day temporary work assignment. Mr. Velez contacted Sedona Staffing to inquire about getting paid. Mr. Velez did not request a new work assignment because he had accepted a temporary work assignment with Labor Ready.

Mr. Velez had established an original claim for benefits that was effective October 18, 2015. The benefits Mr. Velez received included benefits for the week that ended February 20, 2016

and for the seven weeks that followed. The benefits paid to Mr. Velez for the period of February 20, 2016 through April 9, 2016 totaled \$1,863.00. Mr. Velez established an additional claim for benefits that was effective August 14, 2016 and received additional benefits that included \$237.00 for the week that ended August 20, 2016 and \$102.00 for the week that ended August 27, 2016. At that point, Mr. Velez exhausted his benefit eligibility in connection with the October 18, 2016 original claim. The total amount of benefits paid to Mr. Velez since February 20, 2016 is \$2,202.00.

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 § 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.

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.

The evidence establishes that Sedona Staffing fulfilled the requirements of Iowa Code section 96.5(1)(j) by providing Mr. Velez with a clear and concise statement of his obligation to contact the temporary employment firm within three working days after completing a work assignment to request a new work assignment. The evidence establishes that Mr. Velez did not make the required contact to request a new work assignment because he had accepted other employment with Labor Ready. Mr. Valez's February 17, 2016 separation from Sedona Staffing was without good cause attributable to that employer. Accordingly, the employer's account is relieved of liability for the \$2,202.00 in benefits paid to Mr. Valez for the period of February 20, 2016 through August 27, 2016. In addition, the employer's account will not be charged for future benefits that are based on the wages paid to Mr. Valez for the employment period that ended February 17, 2016. Because Mr. Valez left the Sedona Staffing employment to accept employment with Labor Ready, his February 17, 2016, separation from Sedona Staffing does not disqualify him for unemployment insurance benefits. Mr. Valez is eligible for benefits based on the separation, provided he meets all other eligibility requirements.

DECISION:

The September 12, 2016, reference 02, decision is modified. The claimant voluntarily separated from the temporary employment firm without good cause attributable to the employer effective February 17, 2016. The employer's account is relieved of liability for the \$2,202.00 in benefits paid to the claimant for the period of February 20, 2016 through August 27, 2016. In addition, the employer's account will not be charged for future benefits that are based on the wages paid to the claimant for the employment period that ended February 17, 2016. Because the claimant voluntarily separated from the employment to accept other employment, the claimant remains eligible for benefits, provided he meets all other eligibility requirements.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs