

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MARIO D BOGAN**

Claimant

**APPEAL 22A-UI-04043-ED-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**QPS EMPLOYMENT GROUP INC**

Employer

**OC: 05/30/21**

**Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment  
Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the January 26, 2022 (reference 04) unemployment insurance decision that denied benefits based upon his voluntary quit from employment by failing to notify the temporary employment firm within three working days of the completion of his last work assignment. The parties were properly notified of the hearing. A telephone hearing was held on March 16, 2022. The claimant, Mario Bogan, participated personally. The employer, QPS Employment Group Inc, participated through Jessica Segner and Jason Sheldahl. Employer's Exhibit 1 was admitted.

**ISSUES:**

Did claimant voluntarily quit the employment with good cause attributable to employer?  
Did the claimant voluntarily quit by not reporting for an additional work assignment within three business days of the end of the last assignment?  
Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was a temporary employee of a temporary employment firm. Claimant began his employment on September 20, 2021. On September 15, 2021 the claimant signed an acknowledgement of receipt of the QPS Employment Group 3 Day Reassignment Policy. See Employer's Exhibit 1.

Claimant received his job assignment from the employer to work full time at Titan Tire in the warehouse. This job assignment began on September 20, 2021 and claimant last worked on December 20, 2021. The reason the job assignment ended was because the claimant left work during a shift on December 20, 2021 and did not return to work. The claimant testified that he left work due to being injured. The employer testified that QPS Employment Group Inc did not hear back from the claimant until January 27, 2021. After claimant left work on December 20, 2021, he failed to report to the employer within three working days and request further

assignment as required by written policy. The claimant's job was not in jeopardy at the time. Continuing work was available for the claimant at the time.

The claimant testified that he gave his medical records to the on-site supervisor, Mike Ollie, on December 21, 2021. At that time Mr. Ollie told the claimant to go home and come back with his medical paperwork when he came back to work. Claimant testified that he spoke with Mr. Ollie twice a week. Claimant also stated that he talked with Mr. Ollie in January and was told his position had been filled. The employer had no record of the claimant speaking with Mr. Ollie or anyone else from the place of employment between December 21, 2021 to January 27, 2022.

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

For the reasons that follow, the administrative law judge concludes the separation was without good cause attributable to the employer. Benefits are denied.

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 purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of each temporary assignment so they may be reassigned and continue working. The plain language of the statute allows benefits for a claimant "who notifies the temporary employment firm of completion of an assignment and who seeks reassignment."

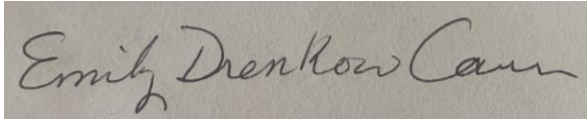
The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 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.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's version of events to be more credible than the claimant's recollection of those events.

As such, the claimant failed to comply with Iowa Code section 96.5(1)j and he voluntarily quit employment without good cause attributable to the employer. The separation is disqualifying. Benefits are denied.

**DECISION:**

The January 26, 2022, (reference 04) unemployment insurance decision is affirmed. The claimant's separation was without good cause attributable to the employer. Unemployment insurance benefits shall be withheld in regards to this employer until such time as claimant is deemed eligible.

A rectangular box containing a handwritten signature in dark ink. The signature is written in a cursive style and reads "Emily Drenkow Carr".

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Emily Drenkow Carr  
Administrative Law Judge

March 28, 2022

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Decision Dated and Mailed

ed/abd