

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ESTEBAN VELOZ

Claimant

APPEAL NO. 15A-UI-06263-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

OC: 04/19/15

Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Esteban Veloz filed a timely appeal from the May 21, 2015, reference 03, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that he had voluntarily quit on March 20, 2015 without good cause attributable to the employer. After due notice was issued, a hearing was held on July 10, 2015. Mr. Veloz participated. Michael Payne represented the employer.

ISSUE:

Whether the claimant separated from the employment for a reason that disqualifies him for 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: Advance Services, Inc. (ASI), is a temporary employment agency. Esteban Veloz began his employment with ASI in November 2014. At that time, ASI Carroll Branch Manager, Sandy Ahmann, placed Mr. Veloz in a full-time temporary assignment at Pella in Carroll. The work hours were 7:00 a.m. to 3:00 p.m., Monday through Friday, with Saturday overtime work as needed. Mr. Veloz last performed work in the assignment on March 20, 2015. At that time, Mr. Veloz went on an approved week-long vacation. Mr. Veloz was supposed to return to work on Monday, March 30, 2015.

During the period of vacation, Mr. Veloz traveled to Calexico, California to spend time with his girlfriend and their three children, ages thirteen, nine and three. While Mr. Veloz was in Calexico, his girlfriend was suffering from kidney stones and developed a problem with a kidney stent and need to be hospitalized on Saturday, March 28, 2015. Mr. Veloz's girlfriend was moved to a hospital in San Diego after a few days. Mr. Veloz accompanied his girlfriend to the hospital and advocated on her behalf. Mr. Veloz also took responsibility for his children while his girlfriend was incapacitated due to illness.

On March 30, Mr. Veloz telephoned the Pella facility in Carroll about not being able to return to work at that time. Mr. Veloz requested a return call. The Pella staff notified ASI of Mr. Veloz

phone call. On March 31, Ms. Ahmann telephoned Mr. Veloz. Pella had agreed to hold the assignment open for another week. Ms. Ahmann told Mr. Veloz that she would need to know by Friday, April 3, whether Mr. Veloz would be returning on Monday, April 6, 2015.

Mr. Veloz did not make further contact with ASI or Pella. Mr. Veloz's girlfriend was discharged from the hospital on Saturday, April 4, 2015. Mr. Veloz did not return to the Pella assignment on Monday, April 6, 2015. Mr. Veloz did not return to Iowa until June 19, 2015. While Mr. Veloz remained in California, he looked for but did not accept new employment. After Mr. Veloz returned to Iowa, he accepted new employment that started on July 6, 2015.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)c 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:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

Iowa Code section 96.5(1)f 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:

f. The individual left the employing unit for not to exceed ten working days, or such additional time as may be allowed by the individual's employer, for compelling personal reasons, if so found by the department, and prior to such leaving had informed the individual's employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist the individual returned to the individual's employer and offered the individual's services and the individual's regular or comparable work was not available, provided the individual is otherwise eligible; except that during the time the individual is away from the individual's work because of the continuance of such compelling personal reasons, the individual shall not be eligible for benefits.

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.

Mr. Veloz initiated the separation from the employment on March 30, 2015, when he did not return from the approved vacation. Mr. Veloz did not return at that time because he needed to assist with his girlfriend's medical issues. As of April 4, 2015, Mr. Veloz's girlfriend had been discharged from the hospital and had recovered sufficiently for Mr. Veloz to return to the employment. Mr. Veloz did not return to the employment at that time, even though ASI had told Mr. Veloz that Pella, and ASI, would hold the assignment open until Monday, April 6, 2015. Mr. Veloz delayed his return to Iowa by another two and one-half months and even then did not return to Pella or ASI to inquire about returning to the assignment or obtaining a new assignment. On July 6, 2015, Mr. Veloz accepted other employment.

The weight of the evidence in the record establishes a voluntary quit without good cause attributable to the employer. The employer's account shall be relieved of liability for benefits. Because Mr. Veloz did not immediately return to the employer to offer his services as soon as his girlfriend had recovered sufficiently for him to do that, and because he has accepted other employment, Mr. Veloz cannot claim the benefit of the exception to disqualification set for that at Iowa Code section 96.5(1)(c). Though Mr. Veloz had a compelling personal reason for not returning to the employment on March 30, 2015, he never attempted to return to the assignment and his separation from the assignment far exceeded 10 days. Accordingly, Mr. Veloz cannot claim the exception to disqualification set forth at Iowa Code section 96.5(1)(f). Accordingly, Mr. Veloz is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

DECISION:

The May 21, 2015, reference 03, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The quit was effective March 30, 2015. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css