

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KAONTA WEATHERSBY
Claimant

APPEAL 21A-UI-17955-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELITE STAFFING LLC
Employer

**OC: 05/30/21
Claimant: Respondent (2)**

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 – Recovery of Benefit Overpayment
PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

The employer filed an appeal from the August 10, 2021, (reference 01) unemployment insurance decision that denied benefits based upon his voluntary quit for failing to report to work for three days in a row without notifying the employer. The parties were properly notified of the hearing. A telephone hearing was held on October 6, 2021. The claimant did not participate. The employer Elite Staffing LLC participated through Owner Chris Namanny. Exhibit 1 was received into the record. Official notice was taken of the agency records.

ISSUES:

Whether the claimant was separated from employment for any disqualifying reason.
Whether the claimant has been overpaid regular unemployment insurance benefits.
Whether the claimant has been overpaid Federal Pandemic Unemployment Compensation benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that:

The claimant was hired on as a temperature taker at the site employer Royal Canaan on January 11, 2021.

On March 29, 2021, the claimant informed the employer that she was resigning effective immediately due to a non-work-related medical issue. The employer stated that it would rehire her, if she reached back out to them in the future. The claimant has not contacted the claimant since that date.

The claimant filed for unemployment insurance benefits with an effective date of May 30, 2021. The claimant has not received any regular unemployment insurance benefits or Federal Pandemic Unemployment Compensation benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer. The administrative law judge further concludes the overpayment issues are moot because the claimant has not received regular or FPUC benefits.

Iowa Code section 96.5(1)d provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Where an employee did not voluntarily quit but was terminated while absent under medical care, the employee is allowed benefits and is not required to return to the employer and offer services pursuant to the subsection d exception of Iowa Code section 96.5(1). *Prairie Ridge Addiction Treatment Services v. Jackson and Employment Appeal Board*, 810 N.W.2d 532 (Iowa Ct. App. 2012).

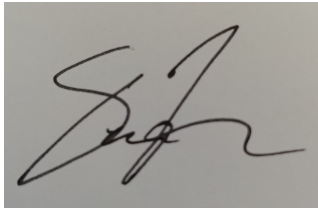
A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). A claimant is not disqualified for leaving employment if he or she (1) left employment by reason of illness, injury or pregnancy; (2) on the advice of a licensed and practicing physician; (3) and immediately notified the employer or the employer consented to the absence; (4) and when certified as recovered by a physician, the individual returned to the employer and offered services but the regular or comparable suitable work was not available. *Area Residential Care, Inc. v. Iowa Department of Job Service*, 323 N.W.2d 257 (Iowa 1982). A "recovery" under Iowa Code Section 96.5-1-d means a complete recovery without restriction. *Hedges v. Iowa Department of Job Service*, 368 N.W.2d 862 (Iowa App. 1985).

The claimant left work due to a non-work-related medical issue. The employer consented to her leaving. The claimant has failed to provide the employer with certification that she has recovered. In addition the claimant has failed to offer her services to the employer. The claimant has failed to meet the requirements of the statute and, therefore, is not eligible to

receive unemployment insurance benefits. The claimant may re-qualify by returning to the employer with an unconditional release. The claimant could then receive benefits if regular work or comparable suitable work was not available. Benefits are denied.

DECISION:

The August 10, 2021, (reference 01) unemployment insurance decision is reversed. The claimant's separation from employment was attributable to the employer. The overpayment issue is moot because the claimant was not paid any regular unemployment insurance or Federal Pandemic Unemployment Compensation benefits. Benefits are denied.

A handwritten signature in black ink, appearing to read 'S. Nelson', is shown within a rectangular box.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

October 8, 2021
Decision Dated and Mailed

smn/kmj