

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CATHY L WERNKE
Claimant

APPEAL NO. 10A-UI-08651-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**L A LEASING INC
SEDONA STAFFING**
Employer

OC: 05/02/10
Claimant: Appellant (2)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Cathy Wernke filed a timely appeal from the June 7, 2010, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on August 3, 2010. Ms. Wernke participated. Chad Baker, Worker's Compensation Administrator, represented the employer and presented additional testimony through Carrie Cannon, Team Lead.

ISSUE:

Whether Ms. Wernke's voluntary quit from the work assignment was for good cause attributable to the employer.

Whether Ms. Wernke's separation from the temporary employment agency was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Cathy Wernke was employed by Sedona Staffing from May 2009 until May 4, 2010, when she voluntarily quit her work assignment in response to a change in the conditions of the employment. In May 2009, Ms. Wernke started work in a long-term, full-time assignment at a restaurant operated by Sedona Staffing client Spirit of Dubuque. Sedona Staffing handles payroll matters for the Spirit of Dubuque, but did not direct Ms. Wernke's employment. Ms. Wernke's immediate supervisor for all but the first couple weeks of the employment was Nancy Webster, owner of Spirit of Dubuque. Until the last two weeks of the employment, Ms. Wernke performed food prep and cooking duties only.

Two weeks before Ms. Wernke quit the assignment, Ms. Webster told Ms. Wernke that she would thereafter be assigned to wait tables and that her cooking duties would be diminished accordingly. Ms. Wernke had not previously waited tables, but initially agreed to try. Ms. Wernke's work hours or wage did not change. Thereafter, Ms. Wernke found herself primarily assigned to wait tables and assigned very few cooking shifts. Ms. Wernke was expected to serve a high number of tables at any given time and was unable to keep up with the

work. Ms. Wernke returned to Ms. Webster and indicated that she did not want to continue waiting tables. Despite that, on the following schedule, all but one of Ms. Wernke's shifts was a waitressing shift. Ms. Wernke voluntarily quit the assignment on May 3, 2010 after Ms. Webster failed to return her to her previous duties.

On May 6, 2010, Ms. Wernke notified Sedona Staffing that she had quit the assignment. Neither Ms. Wernke nor the Sedona Staffing representative broached the issue of whether Ms. Wernke was interested in additional work assignments. On May 7, 2010, Ms. Wernke again contacted Sedona Staffing. During this contact, Ms. Wernke advised Carrie Cannon, Team Lead, that she had recently earned a nursing assistant certificate and asked whether Sedona Staffing has any work assignments in that field. Ms. Cannon told Ms. Wernke that the employer rarely had C.N.A. assignments and had none available at that time. There was no further contact between Ms. Wernke and Sedona Staffing.

In July 2008, Ms. Wernke had signed the Sedona Staffing "Availability Statement." That document placed Ms. Wernke on notice of her obligation to contact Sedona Staffing within three working days of the end of an assignment to request a new assignment or face the possibility of being disqualified for unemployment insurance benefits. The policy was a stand-alone policy on a separate document. Ms. Wernke received a copy of the policy.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge will first address Ms. Wernke's voluntary quit from the work assignment.

Iowa Code section 96.5-1 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.

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.

871 IAC 24.26(1) 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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

The weight of the evidence in the record indicates that Ms. Wernke voluntarily quit the work assignment at Spirit of Dubuque in response to a significant change in the conditions of her employment. The significant change was the change in work duties, from cook/prep cook to waitress. While Ms. Wernke initially agreed to try waiting tables, the weight of the evidence indicates that Ms. Wernke did not fully acquiesce in the substantial change in duties that quickly occurred. Ms. Webster assigned Ms. Wernke—someone who had never waited tables—food service duties that would have been challenging to an experienced food server. Ms. Wernke ended the assignment shortly after the change in duties, after Ms. Webster declined to restore her previous duties. Ms. Wernke's voluntary quit from the assignment was for good cause attributable to Spirit of Dubuque and Sedona Staffing.

The administrative law judge will now address Ms. Wernke's separation from her actual employer, Sedona Staffing.

Iowa Code section 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. 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.

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.

For the purposes of this paragraph:

(1) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their work force during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(2) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

871 IAC 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 weight of the evidence in the record establishes that the employer has an end of assignment notification policy that complies with Iowa Code section 96.5(1)(j) and appropriately notified Ms. Wernke of the policy by having her sign it and by giving Ms. Wernke a copy of the policy she signed.

While the employer meets the definition of a temporary employment firm, the weight of the evidence indicates that Ms. Wernke was not a “temporary employee” under the definition provided in Iowa Code section 96.5(1)(j)(1). Ms. Wernke was assigned to perform work for a single client business on an essentially permanent basis. Ms. Wernke was not placed at Spirit of Dubuque “to supplement their work force during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.” The weight of the evidence indicates that Ms. Wernke was assigned to Spirit of Dubuque for a year and would have continued longer in the assignment had she not quit. Ms. Wernke’s employment falls outside the type of temporary employment the statute is intended to address. Ms. Wernke’s long-term, non-supplemental assignment is excluded from the employment covered by statute. Iowa Code section 96.5(1)(j)(1). The administrative law judge concludes that Iowa Code section 96.5(1)(j) does not apply. Ms. Wernke’s separation from the assignment was also a separation from the employment with Sedona Staffing.

The voluntary separation was for good cause attributable to the employer and would not disqualify Ms. Wernke for benefits. Ms. Wernke is eligible for benefits, provided she is otherwise eligible. The employer’s account may be charged.

Even if the administrative law judge had concluded that Iowa Code section 96.5(1)(j) did apply, the weight of the evidence indicates that Ms. Wernke notified the employer within three working days after the assignment ended that she had quit the assignment. The weight of the evidence indicates that Ms. Wernke’s contact with the employer was to make the employer aware that she was available for further assignments. Ms. Wernke’s further contact with the Sedona Staffing next day supports this conclusion. The administrative law judge concludes that Ms. Wernke satisfied the requirements of the statute.

DECISION:

The Agency representative's June 7, 2010, reference 02, decision is reversed. The claimant voluntary quit the employment for good cause attributable to the employer. The claimant is eligible for benefits provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs