

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIFFANY ROGERS
Claimant

APPEAL NO: 13A-UI-03345-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MEDICAL STAFFING NETWORK
Employer

OC: 01/13/13
Claimant: Appellant (2/R)

Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Tiffany Rogers (claimant) appealed an unemployment insurance decision dated March 18, 2013, reference 01, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Medical Staffing Network (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 18, 2013. The claimant participated in the hearing. The employer participated through Sheila Stotts, Account Manager. Claimant's Exhibits A through D were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary employment agency for medical employees and has up to 40 hours available if the claimant wanted to work that many. She has been employed since October 23, 2008 as a certified nurse's aide and is currently on the employer's list of employees but rarely works. In order to be eligible for work, employees must maintain contact, must provide updated availability and must work one eight-hour shift in a one-month period. Since November 2012 to the day of the hearing, the claimant had only worked five days by choice.

The claimant worked on November 24 and 25, 2012 and December 9, 2012. She went inactive and active repeatedly but did not work again until February 2, 2013. Her phone was disconnected at one point and since January 7, 2013 the employer attempted to contact the claimant 15 separate times without her either answering the phone or returning the calls. The claimant next worked on March 23, 2013. The employer has offered work to the claimant repeatedly but the claimant has declined due to lack of child care or for some other reason.

The issue as to whether the claimant was able and available arose as a result of this case but it was not included on the hearing notice so could not be addressed herein.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits. She is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). While the claimant has not demonstrated she intended to quit, she has demonstrated that she does not want to work.

There has been no final separation and the claimant continues to work for this employer. Benefits are allowed, provided she is otherwise eligible.

This case is remanded to Claims for an initial determination on whether the claimant meets the availability requirements of the law.

DECISION:

The unemployment insurance decision dated March 18, 2013, reference 01, is reversed. There has been no final separation and the claimant qualifies for benefits, provided she is otherwise eligible. The case is remanded for an investigation and determination on the able and available issues.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css