

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RODNEY D MARTINEZ
Claimant

APPEAL NO. 19A-UI-08137-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEDONA STAFFING INC
Employer

OC: 09/22/19
Claimant: Respondent (4/R)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 16, 2019, reference 02, decision that allowed benefits to the claimant provided he met all other eligibility requirements and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant separated from the temporary employment firm on September 13, 2019 with good cause attributable to the employer. After due notice was issued, a hearing was held on November 6, 2019. Claimant Rodney Martinez did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Colleen McGuinty represented the employer and presented additional testimony through Joe Vermuelen. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1 and 2 into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of documenting the employer's participation in the fact-finding interview.

ISSUES:

Whether the claimant voluntarily quit the employment with good cause attributable to the employer.
Whether the claimant was overpaid unemployment insurance benefits.
Whether the claimant must repay overpaid benefits.
Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Sedona Staffing, Inc. is a temporary employment agency. Rodney Martinez established his employment relationship with Sedona Staffing in October 2018. At that time, the employer had Mr. Martinez sign a stand-alone Availability Statement that obligated Mr. Martinez to contact the employer within three working days of completing an assignment to request a new assignment or be deemed to have voluntarily quit and risk being disqualified for unemployment insurance benefits. The employer provided Mr. Martinez with a copy of the signed Availability Statement.

Mr. Martinez last performed work for the employer on September 13, 2019. On that day, Mr. Martinez completed a one-day work assignment, a hockey event at the Five Flags Center in Dubuque. Mr. Martinez had accepted similar one-day assignments at the Five Flags Center for September 21 and 22, 2019. On September 21, 2019, Mr. Martinez notified the employer that he could not appear for the September 21 and 22 assignments because he needed to undergo a medical scan at a hospital. On September 24, the employer attempted to contact Mr. Martinez to see whether he was available for additional work assignments. On September 25, 2019, Mr. Martinez notified the employer that he was in Minnesota at Mayo Clinic receiving radiation therapy as part of a five-week, five-day per week radiation treatment and would not again be available for work until November 2019. Mr. Martinez offered to provide medical documentation, but did not provide medical documentation. The employer believed Mr. Martinez's statement that he needed to separate from the employment due to the non-work related medical condition.

Mr. Martinez established an original claim for benefits that was effective September 22, 2019 and received \$315.00 in benefits for the week that ended September 28, 2019. Sedona Staffing is a base period employer for purposes of the claim.

On October 15, 2019, an Iowa Workforce Development Benefits Bureau deputy held a fact-finding interview that addressed Mr. Martinez's separation from the employer. Colleen McGuinty represented the employer at the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Administrative Code rule 817-24.26(6)(a) provides as follows:

Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

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 Iowa Administrative Code Rule 871-24.25.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning 10 times his weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See Iowa Administrative Code Rule 871-24.27.

The evidence in the record establishes that Mr. Martinez voluntarily quit the part-time employment on September 21, 2019 due to a non-work related medical condition. The weight of the evidence establishes that the separation was upon the advice of a licensing and practicing doctor. The quit was without good cause attributable to the employer. Mr. Martinez is disqualified for benefits *based on the base period wages from this employer* until he has worked in and been paid wages equal to 10 times his weekly benefit amount. Because the quit was from part-time employment, Mr. Martinez remains eligible for benefits based on base period wages from *other* base period employer's, provided he meets all other eligibility requirements. This matter will be remanded to the Benefits Bureau for determination of the appropriate reduced weekly benefit amount.

Because the voluntary quit was due to medical reasons, there is a second, alternative path Mr. Martinez may follow to requalify for unemployment insurance benefits *based on the base period wages from this employer*. Mr. Martinez may requalify for benefits based on the base period wages from this employer by recovering from his illness to the point where he is able to perform his previous regular duties, by having a doctor certify that he has recovered, and by returning to the employer to offer his services. If he does that and the employer has no suitable, comparable work available at that time, the separation will become for good cause attributable to the employer, the employer's account will become subject to charges for benefits, and Mr. Martinez will become eligible for benefits based on wages from this base period employer, provided he meets all other eligibility requirements.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible for benefits even if the claimant acted in good faith and was not at fault. A claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the base period employer failed to participate in the initial proceeding, the base period employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

Mr. Martinez received \$315.00 in benefits for the week that ended September 28, 2019, but this decision disqualifies him for that portion for those benefits that was based on base period wages from this employer. Because the voluntary quit was without good cause attributable to the employer and because the employer participated in the fact-finding interview, Mr. Martinez is required to repay the overpaid benefits. The employer's account shall be relieved of liability for benefits, including liability for benefits already paid for the week that ended September 28,

2019. The administrative law judge notes that the Benefits Bureau has already entered a separate overpayment decision that was based on the Agency's determination that Mr. Martinez was not able to perform work due to illness effective September 22, 2019. The relevant overpayment amount at issue in this case concerning the separation from the employment is a portion of the same \$315.00 overpayment amount referenced in the October 23, 2019, reference 04, decision.

DECISION:

The October 16, 2019, reference 02, decision is modified in favor of the employer/appellant as follows. The claimant voluntarily quit the part-time employment on September 21, 2019 without good cause attributable to the employer. The claimant is disqualified for benefits *based on base period wages from this employer* until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. This employer's account shall be relieved of liability for benefits, including liability for benefits already paid for the week that ended September 28, 2019.

Because the quit was based on a non-work related medical condition, the claimant may also requalify for unemployment insurance benefits *based on the base period wages from this employer* by (1) recovering from his illness to the point where he is able to perform his previous regular duties, (2) by having a doctor certify that he has recovered, and (3) by returning to the employer to offer his services. If he does that and the employer has not suitable, comparable work available at that time, the separation will become for good cause attributable to the employer, the employer's account will become subject to charges for benefits, and the claimant will become eligible for benefits based on wages from this base period employer, provided he meets all other eligibility requirements.

Because the quit was from part-time employment, the claimant is eligible for reduced benefits based on base period wages from *other* employers, provided he meets all other eligibility requirements. This matter is remanded to the Benefits Bureau for determination of the appropriate reduced weekly benefit amount.

The claimant is overpaid benefits for the week that ended September 28, 2019. The overpayment amount at issue in this case is a portion of the same \$315.00 overpayment amount referenced in the October 23, 2019, reference 04, overpayment decision that was based on the Agency's determination that the claimant was not able to work. The claimant must repay the overpaid benefits. If necessary and appropriate, the Benefits Bureau shall determine the specific dollar amount of the overpayment for the week that is based on the disqualifying separation.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn