

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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REMEDY INTELLIGENT STAFFING INC
C/O FRICK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-08814-BT
OC: 06/27/04 R: 03
Claimant: Respondent (4)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Remedy Intelligent Staffing, Inc. (employer) appealed an unemployment insurance decision dated August 6, 2004, reference 03, which held that Julie Stevens (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 14, 2004. The claimant did not provide a telephone number at which she could be contacted, and therefore, did not participate. The employer participated through Sadie Henry, Staffing Consultant/HPT Administrator.

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 employed as a full-time laborer from June 4, 2004 through June 18, 2004. She was scheduled to work on June 21, 2004 but called and stated she could not make it to work. The claimant never again reported to work and never called the employer. The employer attempted to contact the claimant numerous times and finally reached her on August 4, 2004. The claimant reported that she quit her employment because she was going back to school.

While the claimant did not participate in the hearing, she had previously sent in a fax requesting a postponement since she was, "In class at time of scheduled hearing..." She also sent in a copy of her registration/schedule list. No phone number was provided on her fax request. Additional Iowa Workforce Development records indicate the claimant was approved for Department Approved Training (DAT).

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits.

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.

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). The claimant demonstrated her intent to quit and acted to carry it out when she called in her absence on June 21, 2004 and failed to call the employer or report to work after that date. She has the burden of proving that the voluntary quit was for a good reason that would not disqualify her. Iowa Code Section 96.6-2. The claimant quit her employment to return to school. The law presumes it is a quit without good cause attributable to the employer when an employee leaves her employment to go to school. 871 IAC 24.25(26). Her separation from this employer would be disqualifying and the employer's account is not subject to charge.

871 IAC 24.39 provides:

Department-approved training or retraining program. The intent of the department-approved training is to exempt the individual from the work search requirement for continued eligibility for benefits so individuals may pursue training that will upgrade necessary skills in order to return to the labor forces. In order to be eligible for department-approved training programs and to maintain continuing participation therein, the individual shall meet the following requirements:

(1) Any claimant for benefits who desires to receive benefits while attending school for training or retraining purposes shall make a written application to the department setting out the following:

- a. The educational establishment at which the claimant would receive training.
- b. The estimated time required for such training.
- c. The occupation which the training is allowing the claimant to maintain or pursue.

(2) A claimant may receive unemployment insurance while attending a training course approved by the department. While attending the approved training course, the claimant need not be available for work or actively seeking work. After completion of department-approved training the claimant must, in order to continue to be eligible for unemployment insurance, place no restriction on employability. The claimant must be able to work, available for work and be actively searching for work. In addition, the claimant may be subject to disqualification for any refusal of work without good cause after the claimant has completed the training.

(3) The claimant must show satisfactory attendance and progress in the training course and must demonstrate that such claimant has the necessary finances to complete the training to substantiate the expenditure of unemployment insurance funds.

This rule is intended to implement Iowa Code section 96.4(6).

The claimant was approved for DAT and qualifies for benefits, provided she is otherwise eligible. No charges should be assessed to the employer.

DECISION:

The unemployment insurance decision dated August 6, 2004, reference 03, is modified in favor of the appellant. The claimant voluntarily left work without good cause attributable to the employer and the employer's account is not subject to charge. The claimant qualified for DAT and qualifies for benefits provided she is otherwise eligible.

sdb/kjf