

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**BLANCA I VASCO**  
Claimant

**APPEAL NO. 18A-UI-00823-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IMKO ENTERPRISES INC**  
Employer

**OC: 11/19/17**  
**Claimant: Appellant (2)**

Iowa Code Section 96.5(1)(j) – Separation From Temporary Employment

**STATEMENT OF THE CASE:**

Blanca Vasco filed a timely appeal from the January 8, 2018, reference 02, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the Benefits Bureau deputy's conclusion that Ms. Vasco voluntarily quit on November 16, 2017 without good cause attributable to the temporary employment firm by failing to notify the employer within three working days of completing a work assignment after being told in writing of her obligation to make such contact. After due notice was issued, a hearing was held on February 12, 2018. Ms. Vasco participated. Jeff Oswald of Unemployment Insurance Services represented the employer and presented testimony through Heidi Sagert. The hearing in this matter was consolidated with the hearing in Appeal Number 18A-UI-00824-JTT. Department Exhibit D-6 was received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant (DBRO). Spanish-English interpreter Laura Mier of CTS Language Link assisted with the hearing.

**ISSUE:**

Whether Ms. Vasco's separation from the temporary employment agency on or about November 16, 2017 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: IMKO Enterprises, Inc. is a temporary employment agency. Blanca Vasco established her employment relationship with IMKO on July 31, 2017 and performed work in a single full-time temporary work assignment at Palmer Candy. Blanca Vasco is a Spanish-speaking person with minimal English language skills. Ms. Vasco does not read English.

At the time of hire, IMKO Staffing Coordinator Janet Keegan had Ms. Vasco sign an IMKO Workforce Solutions Policies and Procedures Checklist. The document was in English and Ms. Vasco could not read or understand the document. Ms. Keegan did not read the document to Ms. Vasco. The Checklist document consists of a full page of mostly 8.5 point font, single-spaced text divided into nine paragraphs under three sub-headings: Safety and Incident Policy, Substance Abuse Policy, and Communication Procedures. The Communication Procedures

sub-hearing appears three-fifths of the way down the page and is followed by four paragraphs. The first paragraph states as follows:

I understand that I am an employee of IMKO; only IMKO or I can terminate my employment, but my assignment may end based on client needs and preference and for reasons beyond IMKO control. When an assignment ends, I must report to this staffing company for my next job assignment. Failure to do so or to accept my next job assignment will indicate that I have voluntarily quit and will not be eligible for unemployment insurance benefits.

The fourth paragraph under the sub-heading states as follows:

I have read and fully understand the above statements regarding this staffing company's policies and procedures and agree to the same. I understand that failure to comply with these policies and procedures could lead to my termination and may jeopardize my unemployment insurance benefits.

Immediately before the above paragraph, and above the signature line of the document, is the following: "(Please refer to the IMKO Employee Handbook for further information on any of the above policies and procedures)." Though an IMKO representative initialed the document and had Ms. Vasco sign the document, no one dated the signature or initials. The employer did not provide Ms. Vasco with a copy of the policy document she signed. Instead, the employer provided Ms. Vasco with a handbook, written in English, that Ms. Vasco could not read or understand.

Ms. Vasco's temporary work assignment at Palmer Candy ended on November 16, 2017, on which day Palmer Candy notified Ms. Vasco that it was ending the assignment because it had reached a point in its production season where it no longer needed Ms. Vasco's services. Ms. Vasco's work hours in the assignment had started as 4:30 p.m. to 3:00 a.m., Monday through Saturday. Effective September 5, 2017, Palmer Candy and IMKO acquiesced in moving Ms. Vasco to the day shift and Ms. Vasco's work hours became 6:00 a.m. to 4:30 p.m., Monday through Saturday. Ms. Vasco's wage in the assignment was \$10.00 per hour. The work involved packaging candy.

On November 17, 2017, Ms. Vasco went to the IMKO Enterprises office to give notice that her assignment at Palmer Candy had ended and to seek additional work through IMKO. Ms. Vasco spoke with Lucy Rodriguez, Administrative Assistant. Ms. Rodriguez is bilingual in English and Spanish. Ms. Vasco spoke to Ms. Rodriguez in Spanish. Ms. Vasco told Ms. Rodriguez that she had been laid off. Ms. Vasco asked for additional work and stated that if there was no additional work available, she was going to apply for unemployment insurance benefits. IMKO advised Ms. Vasco that it did not have another assignment for her at that time.

On November 22, 2017, Ms. Vasco contacted IMKO to request her start date and end date of her employment. On November 27, 2017, IMKO attempted to contact Ms. Vasco by telephone, but was unable to reach Ms. Vasco. Since the separation, there has been no other contact between the parties outside of unemployment insurance proceedings.

Ms. Vasco established an original claim for unemployment insurance benefits that was deemed effective November 19, 2017. Iowa Workforce Development set Ms. Vasco's weekly benefit amount at \$446.00. Ms. Vasco's base period for purposes of the claim consists of the third and fourth quarters of 2016 and the first and second quarters of 2017. Ms. Vasco's average weekly wage during her highest-earning base period quarter was \$790.00. IMKO is not one of Ms. Vasco's base period employers. Ms. Vasco received \$2,676.00 in unemployment insurance benefits for the six week between November 19, 2017 and December 30, 2017.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5(1)j 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:

j. (1) 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.

(2) 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.

(3) For the purposes of this paragraph:

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

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

Iowa Admin. Code r. 871-24.26(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 employer's end-of-assignment notification policy statement and the procedure the employer followed in conveying that policy to Ms. Vasco do not comply with the requirements of Iowa Code section 96.5(1)(j). The end-of-assignment policy statement is buried in the Policies and Procedures Checklist document amongst several other policy statements. The policy statement says nothing of the requirement that Ms. Vasco contact the employer *within three working days* following the completion of a work assignment. Ms. Vasco was unable to read the document and the employer did not read the document to her. The employer did not provide a copy of the document to Ms. Vasco. Because the employer failed to comply with the requirements of the statute, the statute does not govern this employment relationship. Instead, Ms. Vasco's employment ended, and the separation occurred, when Ms. Vasco fulfilled her contract of hire by completing the temporary work assignment at Palmer Candy. Ms. Vasco was under no obligation to seek additional work through IMKO following completion of the Palmer Candy assignment. Nonetheless, the evidence establishes that Ms. Vasco did in fact contact the employer in person one day following completion of the assignment and did in fact request a new work assignment at that time.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

Ms. Sagert asserts that she offered Ms. Vasco a new assignment during Ms. Vasco's contact with the employer on November 17, 2017. Ms. Vasco emphatically denies that there was any discussion of an additional assignment on that date. The weight of the evidence supports Ms. Vasco's version of the November 17, 2017 contact. The weight of the evidence establishes that Ms. Vasco was at all relevant times motivated to work and more interested in working than collecting unemployment insurance benefits. Ms. Sagert's assertion that she spoke with Ms. Vasco on November 17, 2017 regarding a new assignment conflicts with Ms. Sagert's assertion at the January 3, 2018 fact-finding interview that it was Ms. Keegan who spoke to Ms. Vasco regarding an additional assignment. The weight of the evidence establishes that the employer did not offer Ms. Vasco a new assignment on November 17, 2017 or on any subsequent date.

Even if the employer had offered Ms. Vasco a Kustom-Pak/Tur-Pak assignment on November 17, 2017, the evidence establishes that such work would not be suitable work for Ms. Vasco within the meaning of the law and would have required Ms. Vasco to acquiesce in substantial changes in the conditions of her employment. These conclusions are based on the purported wage for the Kustom-Pak/Tur-Pak assignment, \$9.25 per hour. That wage represented a 9.25 percent decrease in Ms. Vasco's wage relative to the Palmer Candy assignment and would have offered weekly wages dramatically less than Ms. Vasco's \$790.22 average weekly wages during her highest earning base period.

Iowa Admin. Code r. 871-24.26(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.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See *Wiese v. Iowa Dept. of Job Service*, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. *Id.* An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See *Olson v. Employment Appeal Board*, 460 N.W.2d 865 (Iowa Ct. App. 1990).

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Vasco's November 16, 2017 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Ms. Vasco is eligible for benefits provided she is otherwise eligible. The employer's account may be charged for benefits. Because the employer is not a base period employer for purposes of the claim that was effective November 19, 2017 and the claim year that started for Ms. Vasco on that date, the employer's account had not been charged for benefits paid to Ms. Vasco in connection with the claim and would not under any circumstances be charged for benefits paid to Ms. Vasco during her current claim year, which claim year will expire on November 17, 2018. In the event Ms. Vasco establishes a new claim in a subsequent claim year, is at that point deemed eligible for benefits, and the employer is at point deemed a base period employer, then the employer account may be assessed for benefits paid to Ms. Vasco.

**DECISION:**

The January 8, 2018, reference 02, decision is reversed. The claimant's November 16, 2017 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The claimant is eligible for benefits provided she is otherwise eligible. The employer's account may be charged for benefits as outlined above.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/rvs