

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELA R VASCO

Claimant

APPEAL NO. 16A-UI-13706-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

OC: 11/06/16

Claimant: Appellant (5)

Iowa Code section 96.5(1)(d) – Voluntary Quit

STATEMENT OF THE CASE:

Angela Vasco filed a timely appeal from the December 19, 2016, reference 02, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Ms. Vasco had voluntarily quit on October 27, 2016 by failing to notify the temporary employment firm after completing a temporary work assignment. After due notice was issued, a hearing was held on January 19, 2017. Ms. Vasco participated. Melissa Lewien represented the employer and presented additional testimony through Verenise Suarez. Spanish-English interpreter Hardy Rosario of CTS Language Link assisted with the hearing. Exhibits 1 and 2 were received into evidence.

ISSUE:

Whether Ms. Vasco separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Advance Services, Inc. (ASI) is a temporary employment agency. Angela Vasco is a native Spanish speaker, but possesses some ability to speak and understand English. Ms. Vasco performed work for ASI in a single full-time temporary work assignment at Palmer Candy. Ms. Vasco's work hours in the assignment were 6:30 a.m. to 4:30 p.m. Monday through Friday. Ms. Vasco was sometimes required to work on Saturday. Ms. Vasco started the assignment in June 2016. Ms. Vasco last performed work in the assignment on Friday, October 21, 2016. Ms. Vasco did not complete the assignment.

On Monday, October 24, 2016, Ms. Vasco went to the ASI office with a medical note that said she was unable to perform work. Ms. Vasco spoke with Human Resources Coordinator Verenise Suarez. Ms. Suarez is fluent in Spanish and English. On October 24, Ms. Vasco told Ms. Suarez that she was experiencing health issues and would no longer be reporting for work. Ms. Vasco told Ms. Suarez that she was being treated by a urologist for bladder and kidney issues. Ms. Vasco told Ms. Suarez that she was in a lot of pain and needed to determine what was going on with her health. Ms. Suarez directed Ms. Vasco to let her know when she was ready to return to work. Ms. Suarez told Ms. Vasco that she would be required to provide a medical release before the employer could provide her with further work.

Ms. Vasco next made contact with ASI on November 7, 2016. On that day, Ms. Vasco had gone to Palmer Candy and had attempted to return to the assignment without first making contact with ASI and without providing a medical release. The management staff at Palmer Candy declined to allow Ms. Vasco to perform work at Palmer Candy. Ms. Vasco then went to the ASI office and asked Ms. Suarez why she had been sent home and was not allowed to work. Ms. Suarez told Ms. Vasco that there was no assignment at Palmer Candy available for her at that time and that the employer did not have another assignment for her at that time. Ms. Vasco had not provided the employer with a medical release.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-1-d 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:

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.

Workforce Development rule 817 IAC 24.26(6) 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.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

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.

The evidence in the record establishes that Ms. Vasco voluntarily quit the assignment and the employment effective October 24, 2016. Ms. Vasco left the employment upon her doctor's advice and based on a non-work related medical issue. Ms. Vasco attempted to return to the employment and the assignment on November 7, 2016 without providing a medical release indicating that she had been released to return to work. Ms. Vasco's voluntary quit was without good cause attributable to the employer. Ms. Vasco is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Vasco must meet all other eligibility requirements. The employer's account will not be charged.

Ms. Vasco may also requalify for benefits by (1) obtaining a medical release from her doctor certifying that she has recovered from her health issue and (2) returning to the employer to offer her services with that proof that she has been released to return to work. If Ms. Vasco does those two things and the employer at that point has no suitable, comparably work available, then Ms. Vasco may be deemed eligible for unemployment insurance benefits, provided she meets all other eligibility requirements

DECISION:

The December 19, 2016, reference 02, decision is modified as follows. The claimant voluntarily quit the employment on October 24, 2016 due to a non-work related medical condition and up on the advice of a practicing physician. The claimant has not returned to the employer with proof that she has been released by a doctor to return to work. The claimant's voluntary quit was without good cause attributable to the employer. The employer's account shall not be charged. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements.

The claimant may also requalify for benefits by (1) obtaining a medical release from her doctor certifying that she has recovered from her health issue and (2) returning to the employer to offer her services with that proof that she has been released to return to work. If the claimant does those two things and the employer at that point has no suitable, comparably work available, then the claimant may be deemed eligible for unemployment insurance benefits, provided she meets all other eligibility requirements

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs