

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KAYLA M STRONG

Claimant

SEDONA STAFFING INC

Employer

APPEAL 23A-UI-09922-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/10/23

Claimant: Respondent (2)

Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Sedona Staffing Inc., the employer/appellant,¹ appealed the Iowa Workforce Development (IWD) October 12, 2023 (reference 02) unemployment insurance (UI) decision. IWD found Ms. Strong eligible for REGULAR (state) UI benefits because IWD concluded Ms. Strong worked until August 23, 2023 when her temporary assignment ended and she notified the employer, a temporary staffing agency, within three days of the end of her last assignment. On October 23, 2023 the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to the employer and Ms. Strong for a telephone hearing scheduled for November 2, 2023.

The undersigned administrative law judge held a telephone hearing on November 2, 2023. The undersigned heard Appeals 23A-UI-09922-DZ-T and 23A-UI-09923-DZ-T together and created one hearing record. The employer participated in the hearing through Trisha Kaiser, senior account manager and Colleen McGinty, unemployment insurance benefits administrator. Ms. Strong participated in the hearing personally. The undersigned took official notice of the administrative record and admitted Employer's Exhibit 1 as evidence. The undersigned did not admit Employer's Exhibit because it is a duplicate of Employer's Exhibit 1.

ISSUES:

Did Ms. Strong voluntarily quit without good cause attributable to the employer?

Did IWD overpay Ms. Strong UI benefits?

If so, should she repay the benefits?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Strong began working for the employer, a temporary staffing agency, in March 2023. She worked as a full-time fork truck driver assigned to work at Standard Distribution. Her employment ended with the employer on August 23, 2023.

¹ Appellant is the person or employer who appealed.

On Wednesday, August 2, 2023, Ms. Strong called in to Standard Distribution due to pregnancy complications. Ms. Strong saw her doctor the next day and her doctor put her on light duty work. Ms. Strong contacted Standard Distribution that day and told them that she was having pregnancy complications, so her doctor put her on light duty.

The employer's policy provides that employees must contact the employer within three working days of the end of their assignment. The policy further provides that the employer will consider employees who do not do so as having voluntarily quit. The policy is in writing and Ms. Strong acknowledged receiving a copy of the policy in March 2023.

The following Monday, August 7, Ms. Strong contacted the employer and told Ms. Kaiser that her doctor put her on light duty work due to pregnancy complications. Ms. Strong asked for light duty work. Ms. Kaiser told Ms. Strong that the employer did not have light duty work available and the employer would only give her light duty work if she was injured on the job. Ms. Strong stated that she would contact her doctor to see if the doctor would release her from light duty work and let the employer know. Ms. Strong's doctor did not release her from light duty work.

On August 23, Ms. Strong contacted the employer about a paystub. Ms. Strong's doctor still had her on light duty work restriction at this time. During that conversation, Ms. Strong stated that her doctor may put her on bed rest due to pregnancy complications. Ms. Strong's doctor never put her on bed rest. The employer still did not have light duty work available for Ms. Strong. The employer concluded that Ms. Strong quit as of August 23 because the employer concluded that Ms. Strong was on bed rest.

IWD paid Ms. Strong REGULAR (state) UI benefits in the total gross amount of \$4,998.00 for eight weeks between September 10, 2023 and October 28, 2023. The employer participated in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the undersigned concludes Ms. Strong's separation from employment was without good cause attributable to the employer.

Iowa Code section 96.5(1)d and j provide:

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.

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 lettered paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their work force 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. 871-24.25(35) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

(a) Obtain the advice of a licensed and practicing physician;

(b) Obtain certification of release for work from a licensed and practicing physician;

(c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or

(d) Fully recover so that the claimant could perform all of the duties of the job.

Iowa Admin. Code r. 871-24.26(15) 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:

Employee of temporary employment firm.

a. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm within three days of completion of an employment assignment and seeks reassignment under the contract of hire. The employee must be advised by the employer of the notification requirement in writing and receive a copy.

b. The individual shall be eligible for benefits under this subrule if the individual had good cause for not contacting the employer within three days and did notify the employer at the first reasonable opportunity.

c. Good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business; blinding snow storm; telephone lines down; employer closed for vacation; hospitalization of the claimant; and other substantial reasons.

d. Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer, or any other currently accepted means of communications. Working days means the normal days in which the employer is open for business.

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of each temporary assignment so they may be reassigned and continue working. The plain language of the statute allows benefits for a claimant "who notifies the temporary employment firm of completion of an assignment *and* who seeks reassignment."

In this case, Ms. Strong requested another assignment from the employer within three working days of when she could no longer work her usual job duties. Ms. Strong's doctor told her that she was on light duty work restriction on Friday, August 4, and Ms. Strong asked the employer for light duty work on Monday, August 7. Ms. Strong followed the employer's rule and the law in this regard.

But Ms. Strong's medical issues that stopped her being able to do her usual work were not work-related. Ms. Strong obtained the advice of her doctor and offered to return to work but her doctor has not yet released her to return to full duty so she can perform all of the duties of the job. Ms. Strong has not established that she can return to full duty, as is her burden. Ms. Strong is considered to have quit per Iowa law. Ms. Strong did what was best for her, but her leaving was not for a good-cause reason attributable to the employer according to Iowa law. Ms. Strong is not eligible for UI benefits.

The undersigned further concludes IWD overpaid Ms. Strong REGULAR (state) UI benefits in the total gross amount of \$4,998.00.

Iowa Code §96.3(7) provides, in relevant part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers. If the department determines that an employer's failure to respond timely or adequately was due to insufficient notification from the department, the employer's account shall not be charged for the overpayment.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of

discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

Since Ms. Strong is not eligible for UI benefits based on how his job ended with the employer, she is not eligible for the UI benefits IWD already sent her. IWD overpaid Ms. Strong REGULAR (state) UI benefits in the total gross amount of \$4,998.00 for eight weeks between September 10, 2023 and October 28, 2023. Since the employer participated in the fact-finding interview, Ms. Strong is required to repay these UI benefits.

DECISION:

The October 12, 2023 (reference 02) UI decision is REVERSED. Ms. Strong's separation from employment with this employer was not for good cause attributable to the employer. Ms. Strong is not eligible for UI benefits until she has worked in and been paid wages for insured work equal to ten times her weekly UI benefit amount, as long as no other decision denies her UI benefits.

IWD overpaid Ms. Strong REGULAR (state) UI benefits in the gross amount of \$4,998.00 for eight weeks between September 10, 2023 and October 28, 2023. Since the employer participated in the fact-finding interview, Ms. Strong is required to repay these UI benefits.



Daniel Zeno
Administrative Law Judge

November 3, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with this decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.