

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROMONA C GONZALEZ
Claimant

APPEAL 19A-UI-09787-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMEDY INTELLIGENT STAFFING INC
Employer

**OC: 11/03/19
Claimant: Appellant (5)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the December 5, 2019 (reference 01) unemployment insurance decision that found the claimant was not eligible for unemployment insurance benefits based upon her voluntarily quitting on October 30, 2019. The parties were properly notified of the hearing. A telephone hearing was held on January 8, 2020. The claimant, Romona C. Gonzalez, participated personally. Nikki Moore participated as a witness for the claimant. The employer, Remedy Intelligent Staffing Inc., participated through witness Taylor Rodriguez.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Did the claimant voluntarily quit by not reporting for an additional work assignment within three business days of the end of the last assignment?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was a temporary employee of a temporary employment firm. Claimant began a job assignment at General Mills on July 2, 2018 and worked through October 28, 2019. She worked in the warehouse and on the production line packaging products. She typically worked 3:00 p.m. to 11:00 p.m. This was a day-to-day job assignment, meaning there was no set schedule for work. Claimant was required to let her on-site supervisor know she was available for work the next day and he would then confirm her on the schedule.

Claimant worked her normal shift on October 28, 2019 and believed she was confirmed to work on October 29, 2019. However, when she showed up to work on October 29, 2019, she was told that she was not confirmed to work and she was sent home. Claimant was then required to contact Taylor Rodriguez at 8:30 a.m. on October 30, 2019 in order to get put back on the General Mills work schedule. Claimant's telephone did not have any minutes available to use and she did not have enough money to put more minutes on her phone, so she did not call Ms. Rodriguez at 8:30 a.m. on October 30, 2019. Claimant did not have any other person

contact Ms. Rodriguez on her behalf or go into the employer or General Mills to get put back on the schedule. Claimant made no attempts the contact the employer or General Mills until Monday, November 4, 2019.

On Monday, November 4, 2019, claimant contacted Ms. Rodriguez by telephone. Ms. Rodriguez informed the claimant that her job assignment had ended with General Mills. Claimant requested additional work that day and was given another job assignment at Ryder. Claimant had worked a job assignment at Ryder in the past. The job assignment at Ryder was also a day-to-day schedule and required her to contact Ms. Rodriguez to be scheduled for work. Claimant completed her paperwork to work for the Ryder assignment on Wednesday, November 6, 2019. Claimant spoke to Ms. Rodriguez in person on Wednesday, November 6, 2019 and she instructed the claimant to contact her the next day to be scheduled for work at Ryder. The claimant did not contact the employer until at least two weeks later.

The employer has a written policy requiring employees to contact it within three working days of the end of a job assignment to request additional work, otherwise, they are considered to have voluntarily quit. Claimant was not given a copy of this policy and the policy is included within the contract of hire.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code § 96.5(1)(j) 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:

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.

(emphasis added).

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

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 has 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 acceptable means of communications. Working days means the normal days in which the employer is open for business.

A copy of the employer's written policy requiring the claimant to request an additional job assignment within three working days of the end of her assignment was never given to the claimant pursuant to Iowa Code § 96.5(1)j(2) and it was not separate from the contract of hire pursuant to Iowa Code § 96.5(1)j(2). However, the claimant requested additional work within three working days of the end of her assignment with General Mills. After requesting additional work, claimant was given another job assignment at Ryder. Claimant completed paperwork accepting this job assignment on November 6, 2019 and then failed to contact Ms. Rodriguez as instructed to be scheduled for work.

Iowa Code §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 quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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). Where a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

The decision in this case rests, at least in part, upon the credibility of the parties. The issue must be resolved by an examination of witness credibility and burden of proof. 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 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.* After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds that Ms. Rodriguez's testimony that she specifically instructed the claimant to contact her to get scheduled for work with Ryder is more credible than the claimant's testimony that she was told to wait for the employer to contact her.

Claimant had worked for Ryder in the past and knew that she was the party who needed to initiate contact to be put on the schedule for day-to-day job assignments. Even if the claimant believed that the employer would contact her to be put on the schedule, she failed to contact the employer after not hearing from it for over two weeks. The claimant's version of events is not credible.

Claimant did request additional work after her assignment at General Mills ended pursuant to Iowa Code § 96.5(1)(j); however, claimant's assignment at Ryder never ended. It is clear that the claimant had an intention to quit and carried out that intention by failing to initiate contact with the employer to have herself scheduled for shifts with Ryder on November 7, 2019. As such, claimant voluntarily quit.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

Iowa Admin. Code r. 871-24.25(27) 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 § 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 § 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:

(27) The claimant left rather than perform the assigned work as instructed.

Claimant's voluntary quitting was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

DECISION:

The December 5, 2019 (reference 01) unemployment insurance decision is modified with no change in effect. The claimant voluntarily quit on November 7, 2019 without good cause attributable to the employer. Unemployment insurance benefits are denied until claimant has worked in and earned wages for insured work equal to ten times her weekly benefit amount after her separation date, and provided she is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs