

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

YVONNE L ATUNYI
Claimant

QPS EMPLOYMENT GROUP INC
Employer

APPEAL 20A-UI-10714-J1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/24/20
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(1)j – Request Reassignment

STATEMENT OF THE CASE:

On September 2, 2020, the claimant filed an appeal from the August, 24, 2020, (reference 01) unemployment insurance decision that denied benefits based on failure to request reassignment. The parties were properly notified about the hearing. A telephone hearing was held on October 6, 2020. Claimant participated. QPS Employment Group, Inc (QPS), employer, participated through Mai Lor, Unemployment Specialist and Janine Morazan, Placement Coordinator II. The hearing was interpreted. The employer's 3-day reassignment policy was admitted into the record as Exhibit 1.

ISSUE:

Did claimant's employment end for a disqualifiable reason?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on May 2, 2019. Claimant's initial assignment lasted from May 2, 2020 through November 2, 2020. At that time claimant quit her employment. Claimant was no longer an employee with QPS at that time. Claimant contacted QPS again in March 2020. On March 6, 2020 claimant began to work for QPS and was placed at Cole's Quality Foods. Claimant worked as a full-time production worker at Cole's Quality Foods. Claimant was separated from employment on May 29, 2020 when QPS left a voice mail message and text message to claimant that her assignment had ended. The claimant then contacted the employer on June 11, 2020 to seek another assignment and was given a new assignment. Claimant was not required to sign a new three-day reassignment policy for the June 11, 2020 position.

On April 8, 2019 the claimant signed QPS's three-day reassignment policy. (Ex. 1) The policy stated pursuant to Iowa Code 96.5(1)j that failure, without good cause to request reassignment of work within three business days after an assignment has ended will be considered quitting employment. Ms. Morazan testified that new employees are provided information during orientation about the requirement of reporting for reassignment within three business days. Ms.

Morazan also said that any time employees have questions about policies the employer was willing to explain the policy to them.

Exhibit 1 was in English and Spanish. The claimant's primary language is French. Claimant does not understand Spanish. Claimant is able to understand simple instructions in English.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be decided is whether the employee was a temporary employee hired by a temporary employment firm.

Iowa Code section 96.5. provides, in part,

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(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.

The Iowa Supreme Court affirmed the denial of unemployment benefits to a claimant who failed to call her temporary employment firm within three days of the end of her assignment. *Sladek v. Employment Appeal Bd.*, 939 N.W.2d 632, (Iowa 2020).

I find claimant was a temporary employee as defined by the above law.

The next issue is whether claimant requested reassignment within three business days or had good cause to delay in contacting her employer. I find claimant had good cause for contacting her employer on June 11, 2020 and her request for reassignment is timely.

In this case claimant's primary language is French. The employer knew the claimant's primary language was French. The law provides that the three-day notice is to be provided to an employee. The law provides temporary employees have the three-day notice in their possession to refer to as to their rights and responsibility. The fact that temporary employees are told about the three-day notice is not enough. The claimant reported back for work shortly after her assignment had ended. I find claimant had a substantial reason for contacting QPS on June 11, 2020 and timely requested reassignment. Given the fact that claimant did not have the three-day notice in a language she understood, I find she had good cause to contact her employer on June 11, 2020.

It is also important to note Exhibit 1 was signed on April 8, 2019. Claimant's employment ended on November 2, 2020. There is no evidence that claimant signed a three-day assignment notice when she re-contacted QPS in March 2020 and began new employment through QPS. This was a new period of employment, not just a new assignment. Nor is there evidence that claimant was provided the three-day notice when claimant obtained a new job on June 11, 2020. While I find claimant had good cause and substantial reason for contacting her employer more than three


business days, it is not at all certain that claimant was provided the proper three-day notice before she was rehired in March 2020.

Claimant's assignment was ended by QPS. Claimant did not quit and did not commit job-related misconduct. I find that claimant did not voluntarily quit. I find that claimant did not commit a disqualifying act for eligibility for unemployment benefits.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The August 24, 2020, (reference 01) unemployment insurance decision is reversed. Benefits are payable, provided claimant is otherwise eligible.



James F. Elliott
Administrative Law Judge

October 28, 2020
Decision Dated and Mailed

je/sam