

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JASMINE M MASSEY
Claimant

TEAM STAFFING SOLUTIONS INC
Employer

APPEAL 18A-UI-10831-NM-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 10/07/18
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 29, 2018, (reference 03) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 15, 2018. Claimant participated and testified. Employer participated through Human Resource Generalist Sarah Fiedler. Employer's Exhibits 1 through 3 were received into evidence.

ISSUE:

Did the claimant quit by not reporting for additional work assignments 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 employed part-time as a general laborer last assigned at Heinz from August 30, 2018, and was separated from the assignment, but not the employment, on September 28, 2018. The employer's representative notified the claimant that the assignment had ended on October 1, 2018. Claimant was aware that she was required to notify the employer of her separation and request a new assignment within three working days based upon a policy she received at the time of her hire. (Exhibit 1).

Claimant testified she asked if other work was available and the representative told her she would have to check with the accounting department. According to claimant, two days later she went into the employer's offices to request copies of her pay stubs and again ask about available work. Claimant testified she was told by the woman at the front desk that she did not need to sign in and that she would make a note that she had been in to ask about additional assignments. Claimant did not hear anything back from the employer.

Fiedler testified that there was no record of claimant requesting an assignment on October 1, 2018 or coming into the office after that date. The notes in the employer's system, which were entered on October 11, 2018, indicate claimant did not ask for an additional assignment. (Exhibit 2). Additionally, claimant's name did not appear on the office sign in sheet for the time period in question. (Exhibit 3). This led Fiedler to conclude claimant had not requested an additional assignment. The individual who spoke to claimant on October 1 and who was working at the desk when claimant testified she came in to look for work was not available for testimony as she is no longer the employer's employee.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation was with good cause attributable to the employer.

The decision in this case rests, at least in part, on the credibility of the witnesses, as there is a dispute between the parties regarding whether claimant requested a new assignment. 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, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant's version of events to be more credible than the employer's recollection of those events. The claimant's testimony is based on her own, first-hand, recollection of the events in question. Conversely, the employer's testimony was based on second-hand information, which relied heavily on notes entered into a computer system by a third-party ten days after the event in question occurred.

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 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. 871-24.26(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 § 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 § 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 purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for and seeking work at the end of the temporary assignment. Since she contacted the employer within three working days of the notification of the end of the assignment, requested reassignment, and there was no work available, no disqualification is imposed.

DECISION:

The October 29, 2018, (reference 03) unemployment insurance decision is reversed. The claimant's separation from employment was attributable to the employer. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs