

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RENEE L DRUMMOND
Claimant

APPEAL NO. 14A-UI-03289-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AVENTURE STAFFING & PROFESSIONAL
Employer

OC: 02/16/14
Claimant: Respondent (4)

Iowa Code Section 96.5(1)(d) – Voluntary Quit for Medical Reason
Iowa Code Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 21, 2014, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits in connection with a January 22, 2014 separation from the temporary employment agency. After due notice was issued, a hearing was held on April 17, 2014. Claimant Renee Drummond did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Deb Miller, Human Resources Specialist, represented the employer. Exhibits One through Five were received into evidence. The administrative law judge took official notice of the agency's administrative record of benefits disbursed to Ms. Drummond. The administrative law judge took official notice of the material submitted for and generated in connection with a fact-finding interview, but did so only for the purpose of determining whether the employer participated in the fact-finding interview.

ISSUES:

Whether the claimant's separation from the temporary employment agency was for good cause attributable to the employer.

Whether the claimant has been overpaid benefits.

Whether the claimant must repay benefits.

Whether the employer's account may be charged for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Aventure Staffing & Professional is a temporary employment agency. Renee Drummond performed work into full-time, temporary work assignments at Montezuma Manufacturing. Ms. Drummond most recently performed work for Montezuma Manufacturing on December 16, 2013. On that day, Ms. Drummond went home early due to illness and properly notified the employer. Ms. Drummond was absent due to illness on December 17 and 18, 2013 and provided

appropriate notice to the employer. Ms. Drummond was absent due to illness on December 20, 2013, but did not provide proper notice. December 20, 2013 was the last day that Montezuma Manufacturing engaged in production before it began a temporary shutdown during the period of December 23, 2013 through January 2, 2014. At the time of the shutdown, Ms. Drummond knew that she was to return to work at Montezuma Manufacturing on January 3, 2014.

Ms. Drummond did not return to work on January 3, 2014. Ms. Drummond had been hospitalized on December 31, 2013. On January 4, 2014, Ms. Drummond provided a medical note from her doctor indicating that she had been hospitalized on December 31, 2013 and would need to remain off work until a follow-up medical appointment. The follow-up appointment was set for January 14, 2014. Ms. Drummond ended up not being released by her doctor to return to work until March 18, 2014. At that time, Ms. Drummond contacted the employer to offer her services, but the employer did not have any work for her.

Ms. Drummond started a new work assignment at Montezuma Manufacturing on April 14, 2014.

Ms. Drummond had established an additional claim for benefits that was effective December 22, 2013. That claim was based on an earlier original claim for benefits that was effective February 17, 2013. In connection with the additional claim for benefits, Ms. Drummond received \$1,832.00 in benefits for the eight-week period of December 22, 2013 through February 15, 2014, when the benefit year expired. Ms. Drummond received \$229.00 in benefits for each of those weeks. Ms. Drummond then established a new original claim for benefits that was effective February 16, 2014 and received benefits for the nine-week period of February 16, 2014 through April 19, 2014. For each week, Workforce Development paid Ms. Drummond \$253.00 in benefits. The total amount paid to Ms. Drummond so far in connection with the new claim year is \$2,277.00.

The employer participated in the March 18, 2014, fact-finding interview that led to the March 21, 2014, reference 01, decision that allowed benefits. Ms. Miller provided a verbal statement to the claims deputy and submitted documentation for the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 indicates that Ms. Drummond voluntarily quit the employment due to a non-work-related medical condition. The quit was effective January 3, 2014, when Ms. Drummond failed to return to work at the end of a scheduled shutdown because her doctor had taken her off work. The separation was based on advice Ms. Drummond had received from her doctor. Ms. Drummond returned to the employer on March 18, 2014, after having recovered and having been released to return to work, offered her services to the employer, but the employer did not have any work for her at that time. Prior to the benefit week that started March 16, 2014, Ms. Drummond was not eligible for benefits because her voluntary quit was at that time *without* good cause attributable to the employer. Effective the week of March 16-22, Ms. Drummond became eligible for benefits in connection with the separation, provided she was otherwise eligible, because she had recovered from her illness, had been released to return to work, had returned to offer her services to the employer, and the employer did not at that time have work for her. At that point, the separation became for good cause attributable to the employer.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a

claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3-7-a, -b.

The claimant received benefits but has been denied benefits for a portion of her claim period as a result of this decision. Ms. Drummond has been overpaid \$1,603.00 in benefits for the seven-week period of December 29, 2013 through February 15, 2014. Ms. Drummond has been overpaid \$1,002.00 in benefits for the four-week period of February 16, 2014 through March 15, 2014. Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid for the period of December 23, 2013 through March 15, 2014. The employer's account may be charged for benefits paid to the claimant during the benefit week that ended December 28, 2013 and for the benefits disbursed to the claimant for the period beginning March 16, 2014.

DECISION:

The claims deputy's March 21, 2014, reference 01, decision is modified as follows. The claimant voluntarily quit the employment for a non-work-related medical condition. The quit was effective January 3, 2014. Prior to the benefit week that started March 16, 2014, the claimant was not eligible for benefits because her voluntary quit was at that time *without* good cause attributable to the employer. Effective the week of March 16-22, 2014, the claimant was eligible for benefits, provided she was otherwise eligible, because she had recovered from her illness, had been released to return to work, had returned to offer her services to the employer, and the employer did not at that time have work for her. At that point, the separation became for good cause attributable to the employer.

The claimant was overpaid has been overpaid \$2,605.00 in benefits for the 11-week period of December 29, 2013 through March 15, 2014. The claimant must repay that amount and the employer's account will not be charged for those benefits. The employer's account *may* be charged for benefits paid to the claimant during the benefit week that ended December 28, 2013 and for the benefits disbursed to the claimant for the period beginning March 16, 2014.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css