

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**VIRGINIA M. CARMEN
1200 16TH AVENUE
FULTON, IL 61252**

**ALLIANCE MEDICAL STAFFING
ALLIANCE MEDICAL ST.
OMAHA, NE 68105**

**DIA APPEAL NO. 21IWDUI2024
IWD APPEAL NO. 21A-UI-03559**

**ADMINISTRATIVE LAW JUDGE
DECISION**

APPEAL RIGHTS:

This Decision Shall Become Final, unless within fifteen (15) days from the mailing date below the administrative law judge's signature on the last page of the decision, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

***Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
or
Fax (515) 281-7191***

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:

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your 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.

ONLINE RESOURCES:

UI law and administrative rules: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-law-and-administrative-rules>

UI Benefits Handbook: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-benefits-handbook-guide-unemployment-insurance-benefits>

Handbook for Employers and forms: <https://www.iowaworkforcedevelopment.gov/employerforms>

Employer account access and information: <https://www.myiowaui.org/UIIPTaxWeb/>

National Career Readiness Certificate and Skilled Iowa Initiative: <http://skillediowa.org/>

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VIRGINIA M. CARMEN
Claimant

**DIA APPEAL NO. 21IWDUI2024
IWD APPEAL NO. 21A-UI-03559**

ALLIANCE MEDICAL STAFFING
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/8/20
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 20, 2021 (reference 01) unemployment insurance decision that denied benefits based upon her separation from employment. The parties were properly notified of the hearing. A telephone hearing was held on March 24, 2021. The claimant, Virginia Carmen, participated on her own behalf and presented testimony. The employer, Alliance Medical Staffing, did not send a representative to the hearing. Official Notice was taken of the administrative file, which included the notice of telephone hearing, the decision at issue herein, and the appeal request.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began working for Alliance Medical Staffing, a temporary employment agency, on September 19, 2020 as a CNA. Because she had previously had COVID-19, they placed her in the COVID unit, believing she would not be re-infected with the virus. The employer paid for her motel room while she was working as it was a significant distance from her home. (Carmen testimony).

Claimant was re-infected with the COVID-19 virus and became very ill. She was off of work for 20 days, in bed the entire time. Claimant had to decide whether to stay at the motel or try to drive home. She spoke with Andrew at Alliance Medical Staffing when she became ill. Andrew told her to stay in her room at the motel as it was already paid for by the company. Andrew told her that when she was feeling better she could go back to work. He also told her he was going to give her two weeks of COVID pay, as a maximum amount, even if she had to be off longer than that. He told her she would receive 40 hours one week and 40 hours the next week added on to that check. (Carmen testimony).

Claimant returned to work on November 5, 2020, after recovering. When she received her pay check that week, she noticed the COVID pay wasn't included. She asked him what was going on. Andrew told her they had to keep all of her COVID pay to pay for her motel room. She told him that she did everything he told her to do. She also told him he needed to pay her the COVID pay as he agreed or she would quit. She reminded him that he didn't say they would pull her housing. She offered to drive home and he told her to stay at the motel. (Carmen testimony).

Alliance Medical Staffing did not pay Claimant for the COVID pay as they had agreed. She quit her employment due to the company's refusal to pay her the COVID pay. Claimant obtained new employment on February 9, 2021. She was off work from November 5, 2020 through February 9, 2021. She was looking for work throughout that time period. (Carmen testimony).

The employer did not send a representative to the hearing to dispute any of Claimant's testimony.

REASONING AND CONCLUSIONS OF LAW:

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

There appears to be no claim by either party that Claimant was fired from her employment. All evidence presented supports a finding that she voluntarily quit her employment. The undersigned finds Claimant was not discharged from her employment.

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.

Iowa Admin. Code r. 871-24.25(20) 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.

A voluntary quitting requires an intention to terminate the employment and requires an overt act of carrying out that intention. *Wills v. Emp. Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989); *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

A claimant will not be disqualified from receiving unemployment insurance benefits if the voluntary quit is made due to good cause attributable to the employer. This includes a change in the contract of hire. The change must be "substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc." Iowa Admin. Code r. 871-24.26(1). Clearly, there was a change in Claimant's remuneration. Claimant was told not to drive home and to stay at the motel while she

recouperated. The company's representative told her the company was paying for the motel room and she would receive up to 40 hours of COVID pay. He did not tell her at any time that her COVID pay would be used to offset the motel charge. This constitutes a substantial change in the contract of hire.

Based upon the information received at hearing, Claimant did resign from her employment, due to a change in the contract of hire. Claimant is therefore eligible for benefits.

DECISION:

The January 20, 2021 (reference 01) unemployment insurance decision is reversed. Claimant will be allowed benefits provided she is otherwise eligible.



Tricia A. Johnston
Administrative Law Judge

March 30, 2021
Decision Dated and Mailed

TAJ/

CC: Virginia M. Carmen (by First Class Mail)
Alliance Medical Staffing (by First Class Mail)
Nicole Merrill, IWD (By Email)
Joni Benson, IWD (By Email)