

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTON DURGINS

Claimant

APPEAL NO. 12A-UI-02464-VST

CAMBRIDGE TEMPOSITIONS INC

Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/15/12

Claimant: Appellant (5R)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated February 28, 2012, reference 02, which held that the claimant was not eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 28, 2012. Claimant participated. Kimberly Longstreet was a witness for the claimant. The employer participated by Elaine Pruett, account manager. The record consists of the testimony of Anton Durgins; the testimony of Kimberly Longstreet; the testimony of Elaine Pruett; and Employer's Exhibit One.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a temporary staffing agency. The claimant's first assignment was at Sunopta on October 11, 2011. He worked a total of sixteen hours. On October 24, 2011, he started an assignment at Heinz Quality Chef. The claimant's last day of work was November 30, 2011. He called in sick on December 1, 2011. He also called in sick on December 2, 2011. At 10:22 a.m., he showed up at the employer to pick up his check. He said he was feeling shaky and did not know if he would be able to work. The employer did not hear from the claimant after that. He was working for another temporary employer from December 2, 2011 through December 23, 2011.

REASONING AND CONCLUSIONS OF LAW:

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 quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

It is impossible to reconcile the testimony of the claimant and the employer in this case. The findings of fact show how I resolved the credibility issues in this case. The testimony from Ms. Pruett is more persuasive than the testimony from the claimant. The claimant testified that his last day of work was November 21, 2011, and that he spoke to Meghan at the employer and asked her for a new assignment. No Meghan worked for the employer at that time. The claimant's testimony also varied on his last day at the Heinz assignment. He first said I ended on November 21, 2011, and later he said it ended on November 18, 2011. The claimant received three paychecks from the employer after November 18, 2011, and the final check was for 22 ½ hours on December 9, 2011. This means that he must have worked after November 21, 2011, as Ms. Pruett testified. Finally, the claimant was not laid off from Heinz. Ms. Pruett said that Amy would have notified her if the claimant had been laid off. There was no such notification.

The claimant made no contact with the employer after December 2, 2011. The claimant was actually working for another employer from December 2, 2011, to December 23, 2011, according to his testimony. The claimant abandoned his job with the employer in favor of different employment. There is no credible evidence that the claimant was laid off by the employer. The claimant severed the employment relationship with the employer without good cause attributable to the employer. Benefits are denied.

The claimant may be eligible for benefits if he left for different or better employment with a different employer and actually performed services for this new employer. Any wage credits from this employer would then be charged to the unemployment trust fund. This matter is remanded to the claims section for further investigation.

DECISION:

The decision of the representative dated February 28, 2012, reference 02, is modified without effect. The claimant is deemed a voluntary quit without good cause attributable to the employer. This matter is remanded to the claims section for further investigation on whether the claimant may be eligible for benefits for leaving for different or better employment.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs