

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SCOTTY A. HARDEN
Claimant

**EMPLOYER SOLUTIONS STAFFING
GROUP**
Employer

APPEAL 21A-UI-09644-CS-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (2)

Iowa Code §96.5(2)a-Discharge/Misconduct
Iowa Code §96.5(1)- Voluntary Quit
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

On April 5, 2021, the claimant/appellant filed an appeal from the April 1, 2021, (reference 03) unemployment insurance decision that disallowed benefits based on the claimant voluntarily quitting for personal reasons. The parties were properly notified about the hearing. A telephone hearing was held on June 15, 2021. Claimant personally participated through testimony. Employer did not register a phone number for the hearing and thus did not participate.

ISSUES:

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?
Was the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for temporary employment agency in September 2020. Claimant last worked as a full-time fork lift operator. Claimant was separated from employment on November 5, 2020, when he was notified his assignment had ended due to his background check. Within two days claimant notified employer and requested a new assignment. Employer notified claimant that they did not have any other jobs available for him. Claimant called a week later requesting a new assignment and was again notified they did not have another assignment for him. Claimant did not receive a notice from the employer that he needed to contact the employer within three days of the ending of his assignment to request a new assignment. Claimant did not sign anything acknowledging receipt of the three day notice requirement.

Claimant was able to and available for work from November 9, 2020 until he started working again in January 2021. Claimant was terminated from his new employment because he did not have transportation. Claimant did not have transportation for the weeks ending February 13, 2021 and February 20, 2021. After February 20, 2021, claimant was able to and available for work.

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.

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.

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 claimant 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.

Now the administrative law judge must consider whether the claimant was able for work and available for work.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. *Illness, injury or pregnancy.* Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.22(2) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services

which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23 provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment.

An individual claiming benefits has the burden of proof that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. Claimant testified that he was available for work beginning November 9, 2021. Claimant testified he did not have transportation for the weeks ending February 13, 2021 and February 20, 2021. Claimant testified that he bought a new vehicle on February 20, 2021 and was again able and available for work. Claimant has been actively seeking work during this time period. Benefits are allowed.

DECISION:

The April 1, 2021, (reference 03) unemployment insurance decision is REVERSED. The claimant's separation from employment was attributable to the employer. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid. Additionally the claimant is able to work and available for work effective November 9, 2020, excluding the weeks ending February 13, 2021 and February 20, 2021.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

Decision Dated and Mailed

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