

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**JEWEL A ABELBURDOCK**  
Claimant

**FLAGGER PROS USA LLC**  
Employer

**APPEAL NO. 21A-UI-04913-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/22/20**  
**Claimant: Appellant (5R)**

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Iowa Code Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the February 4, 2021, reference 01, decision that disqualified the claimant for benefits, based on the deputy's conclusion that the claimant refused recall to suitable work on November 19, 2020. After due notice was issued, a hearing was held on April 15, 2021. The claimant participated. Victoria Johnson represented the employer. Exhibits A and C were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, DBIN and KCCO.

The parties waived formal notice on whether the claimant voluntarily quit the employment without good cause, was laid-off, or was discharged for misconduct in connection with the employment.

**ISSUE:**

Whether the claimant refused recall to suitable work on or about November 19, 2020.  
Whether the claimant voluntarily quit without good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by Flagger Pros USA, L.L.C. as a full-time, seasonal traffic control worker from July 2020 until November 19, 2020. The claimant's home is in Red Oak. The claimant performed work in assignment throughout Iowa. The claimant also performed work in Nebraska on multiple occasions. The claimant was required to provide her own transportation to and from work assignments. The claimant was required to pay for her own meals while away from home. If the assignment was more than 60 miles away from the claimant's home, the employer provided lodging pursuant to corporate lodging agreements the employer had with lodging vendors. The claimant deemed the lodging offered by the employer to be below her standards and elected to secure her own lodging at her own expense. The employer acquiesced in this arrangement.

The claimant last performed work for the employer at an assignment in Lexington, Nebraska, three hours west of Omaha. The claimant began her work at the assignment on Monday,

November 16, 2020, but arrived three hours late. At the time the claimant accepted the assignment, the employer told the claimant that the assignment was expected to last one to two weeks. At the time the claimant begrudgingly accepted the assignment, she told the employer that she did not want to work in Nebraska because her ex-husband resided in Nebraska. The claimant had twice previously worked in Nebraska in connection with a week-long assignment and a two-day assignment. There had been no prior issues raised regarding work in Nebraska.

On November 19, 2020, the employer called the claimant at the jobsite to give the claimant her assignment information for the following week. When the crew chief attempted to hand the phone to the claimant, the claimant refused to take the call. Thursday, November 19 was the last scheduled work day at the assignment that week, though the assignment was to last until the next Tuesday, November 24, 2020. The claimant asserts she did not take the employer's call because traffic was too loud. However, the claimant actually declined the employer's call because she was upset about circumstances at the assignment. The claimant knew she would be assigned to continue in the assignment the next week. The claimant had decided to leave the assignment and to not return to the assignment. The claimant became upset when the crew chief, Brad Hackett, indicated that day that he thought the employer was paying for a room for the claimant. Though this was clearly a miscommunication on some level, the claimant got stuck on the irrational notion the communication about the room was somehow intentional dishonesty on the part of the employer. The claimant asserts she made a return call to the workplace. The employer has no record of such contact and would ordinarily document such contact. The claimant further asserts that when she returned the call on November 19, she would not allow the employer to provide her assignment information for the following week, but asked instead for the employer to wait until she got home to provide her assignment information. There would have been no rational basis for any such request. The claimant did not return to the assignment, though the employer had continued work in the assignment. There was no further contact between the claimant and the employer. The employer has a policy in its handbook that obligates an employee to contact the employer within three days of completion of an assignment. The policy was included amongst many other policies. The claimant was aware of the policy.

#### **REASONING AND CONCLUSIONS OF LAW:**

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 Ct. 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.*

Where the claimant's testimony deviates from the employer's testimony, the administrative law judge finds the employer's testimony more credible and reliable. The claimant presents as an irrational, emotionally-charged thinker, quick to descend into emotional meltdown. The claimant's irrational thinking extends to a belief that Thanksgiving 2020 was set on a Tuesday. This irrationality played out in the course of the claimant's interactions with the employer.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

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).

Iowa Admin. Code r. 871-24.25(21) 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. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

- (21) The claimant left because of dissatisfaction with the work environment.
- ...
- (27) The claimant left rather than perform the assigned work as instructed.

The weight of the evidence in the record establishes a voluntary quit without good cause attributable to the employer, rather than a refusal of recall. The weight of the evidence establishes the claimant made a decision on November 19, 2020 to separate from the employment due to dissatisfaction with multiple aspects of the employment. The weight of the evidence establishes that the claimant was aware the assignment would extend to the following week and intentionally avoided contact with the employer to avoid having that conversation. The claimant was upset with the employer, based her irrational conclusion that the employer had somehow been dishonest about the lodging arrangement. The employer had not been dishonest. The employer was under no obligation to deviate from its standard practices to accommodate the claimant's irrational demands, desires or expectations. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

**DECISION:**

The February 4, 2021, reference 01, decision is modified as follows: The claimant voluntary quit on November 19, 2020 without good cause attributable to the employer. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

This matter is remanded to the Benefits Bureau for initial determination, consistent with this decision, of whether the claimant had been able to work and available for work since November 22, 2020.



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James E. Timberland  
Administrative Law Judge

May 18, 2021  
Decision Dated and Mailed

jet/kmj

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. *If this decision becomes final or if you are not eligible for Pandemic Unemployment Assistance (PUA), you will have an overpayment of benefits that you will be required to repay.* Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.