

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MICHELLE STUART**  
Claimant

**SEDONA STAFFING INC.**  
Employer

**APPEAL 20A-UI-08068-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/29/20**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

On July 8, 2020, Michelle Stuart (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated July 2, 2020 (reference 01) that determined claimant was ineligible for benefits. Specifically, the decision determined claimant voluntarily quit on March 11, 2020, by failing to notify the temporary employment firm within three working days of the completion of her last assignment.

A telephone hearing was held on August 20, 2020. The parties were properly notified of the hearing. The claimant participated personally and was represented by Attorney Jason Lehman. Claimant's husband, David Stuart, observed the hearing. Sedona Staffing Inc. (employer/respondent) participated by UI Administrator Colleen McGuinty. Branch Manager Joe Vermeulen participated as a witness for employer.

Claimant's Exhibits A-D were admitted. Official notice was taken of the administrative record.

**ISSUE(S):**

- I. Was the separation from employment a layoff, discharge for misconduct, or voluntary quit without good cause?
- II. Did the claimant make a timely request for another job assignment?

**FINDINGS OF FACT:**

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

Claimant worked for employer as a temporary employee. Claimant's first day of employment was June 6, 2011. Claimant last performed work for employer on March 11, 2020. Claimant was at that time assigned to work at a hockey game. Claimant was scheduled to work after that date as well. However, shortly thereafter she learned from Administrative Services Lead Sarah Vlach that the hockey season had been cancelled and those assignments would be unavailable. Claimant subsequently accepted assignment to events set for March 13 and 14, 2020. However, those events were cancelled as well. Claimant learned of those cancellations in a call with Vlach on March 13.

Claimant did not formally request a new assignment after that time. This is because over her approximately nine years of employment, Vlach had typically contacted her when assignments became available. Claimant had not in the past consistently reached out to Vlach to request reassignment after an assignment had ended: For example, after the hockey season had ended. Vlach would simply contact her prior to the subsequent season starting to see if she was available for assignments.

Employer has a policy requiring employees to request a new assignment within three working days of an assignment ending and providing that failing to do so is considered a voluntary quit. Claimant signed an acknowledgment of that policy in August 2013. However, it is unclear whether she received a copy of the policy. She has not received a copy of the policy since then. Claimant credibly testified that she was unaware of that policy at the time of her most recent assignment ending and that she had no intent to end her employment relationship with employer.

Employer testified that claimant remains eligible for assignments and has not been discharged. However, it also argued that claimant voluntarily quit by not accepting reassignment after her most recent assignment ended.

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

For the reasons set forth below, the decision dated July 2, 2020 (reference 01) that determined claimant was ineligible for benefits is REVERSED. Claimant has not voluntarily quit or otherwise separated from employment. Benefits are allowed, provided claimant is otherwise eligible.

Iowa Code section 96.5(1)a 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. 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 paragraph:

(a) "*Temporary employee*" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce 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.

Iowa Admin. Code r. 871-24.26 provides in relevant part:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(15) Employee of temporary employment firm.

a. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm within three days of completion of an employment assignment and seeks reassignment under the contract of hire. The employee must be advised by the employer of the notification requirement in writing and receive a copy.

b. The individual shall be eligible for benefits under this subrule if the individual has good cause for not contacting the employer within three days and did notify the employer at the first reasonable opportunity.

c. Good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business; blinding snow storm; telephone lines down; employer closed for vacation; hospitalization of the claimant; and other substantial reasons.

d. Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer, or any other currently acceptable means of communications. Working days means the normal days in which the employer is open for business.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). "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". *Id.* (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions, the case for good cause is stronger where the employee

complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

The temporary employer/employee provisions of Iowa Code 96.5(1) and Iowa Admin. Code r. 871-24.26(15) provide that a temporary employee who fails to notify an employer of an assignment ending and to seek reassignment within three days of an assignment ending has voluntarily quit, so long as the claimant has signed for and received a copy of such policy. The idea behind these provisions of law is that a claimant who does not report the ending of an assignment and request further work at that time - despite the availability of other work and notification that failing to do so would result in the end of the employment relationship - has evinced a desire not to remain employed.

Claimant has not evinced any such desire here. Claimant was notified of the policy approximately seven years ago. She credibly testified that she was unaware of it at the time of her most recent assignment ending. Claimant's lack of awareness of the policy makes sense not only due to the passage of time from when she signed an acknowledgement of it but also because employer's practices were contrary to the policy. Vlach consistently reached out to claimant with assignments after the most recent assignment had ended, rather than claimant reaching out to Vlach. Furthermore, claimant had in the past not requested a new assignment after her assignment had ended, with no apparent consequence.

While employer's written policy provides for a voluntary quit in this situation, its practice – at least with regard to claimant and Vlach – was different than this policy. While claimant did not formally request a new assignment after her most recent assignment had ended, employer was clearly aware of the assignment ending and of claimant's availability for future assignment. Claimant did not try to hide the fact that the assignment had ended or make herself unavailable for future assignment. Nor did she evince any intent of ending her employment relationship with employer.

An overly-technical reading of the provisions of law addressing the temporary employer/employee relationship here would be incongruent with the spirit of those provisions. Of further note, employer offered inconsistent testimony on whether the employment relationship had even ended. It argued both that claimant voluntarily quit by not requesting reassignment after her most recent assignment ended and that claimant was still eligible for assignment.

Given the facts and circumstances here, the administrative law judge finds claimant has not voluntarily quit or otherwise separated from employment with employer. Therefore, she is not disqualified from benefits, and benefits are allowed provided she is otherwise eligible.

#### **DECISION:**

The decision dated July 2, 2020 (reference 01) that determined claimant was ineligible for benefits is REVERSED. Claimant has not voluntarily quit or otherwise separated from employment. Benefits are allowed, provided claimant is otherwise eligible.



---

Andrew B. Duffelmeyer  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 478-3528

---

August 25, 2020  
Decision Dated and Mailed

abd/sam