

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VALITA N GARRETT
Claimant

APPEAL NO. 09A-UI-00994-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES STAFFING SERVICES INC
Employer

OC: 11/16/08 R: 02
Claimant: Respondent (2-R)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 14, 2009, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on February 10, 2009. Claimant Valita Garrett did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Amy MacGregor, Human Resources Manager, represented the employer and presented testimony through Ashley Leydens, Placement Specialist.

ISSUE:

Whether the claimant's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a staffing agency. Valita Garrett established her employment relationship with DES Staffing on June 2, 2007. Ms. Garrett's most recent employment assignment through DES Staffing was a full-time, temp-to-hire position at Innovative Injection Technologies in West Des Moines. Ms. Garrett started the assignment on August 3, 2008. Ms. Garrett stayed at the assignment for 45 minutes before she walked off the job. Ms. Garrett did not speak with the supervisor or a member of management prior to departing from the assignment workplace. Ms. Garrett did not return. Ms. Garrett did not make further contact with DES Staffing or with the client business. Both DES Staffing and the client business continued to have work available for Ms. Garrett.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

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.

The weight of the evidence indicates that Ms. Garrett voluntarily quit the temp-to-hire work assignment and voluntarily quit the employment at DES Staffing on August 3, 2008 for personal reasons. The weight of the evidence indicates that the staffing agency and the client business continued to have work available for Ms. Garrett. The weight of the evidence fails to establish that the voluntary quit was in any way for good cause attributable to the employer. Accordingly, Ms. Garrett is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Garrett.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The Agency representative's January 14, 2009, reference 02, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs