

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ELLALaura M GAMBLIN**  
Claimant

**PEOPLEREADY INC**  
Employer

**APPEAL 17A-UI-10244-JP-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/10/17**  
**Claimant: Respondent (1)**

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Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer filed an appeal from the September 29, 2017, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 24, 2017. Claimant participated. Employer participated through branch manager Kimberly Thompson. Employer Exhibit 1 was admitted into evidence with no objection. Official notice was taken of the administrative record, including claimant's benefit payment history and the fact-finding documents, with no objection.

**ISSUES:**

Did claimant quit by not reporting for additional work assignments within three business days of the end of the last assignment?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed in a one-week short term temporary position, full-time, as a general laborer/flagger, last assigned at Cedar Falls Construction from August 27, 2017, and was separated from the assignment, but not the employment, on August 29, 2017. Claimant voluntarily ended her assignment on August 29, 2017 due to safety concerns.

On August 29, 2017, claimant spoke to a secretary at the employer, Jeremy, about her concerns. Jeremy told claimant he would talk with Ms. Thompson. Claimant did not hear back from the employer on August 29, 2017. Claimant attempted to contact the employer multiple times on August 29, 2017 and the early morning on August 30, 2017 after her initial discussion with Jeremy to discuss her safety concerns.

On August 30, 2017, shortly before 5:00 a.m., Ms. Thompson arrived at the employer and Eddie (an employee that was supposed to work with claimant on the assignment) was present and he said claimant did not show up. Ms. Thompson called claimant but was unsuccessful in reaching her. Ms. Thompson then sent claimant a text message that per claimant's voicemail she was still going to the assignment if claimant did not receive a response, but because she did not show, no one showed up for the assignment all because someone wore too much perfume. Ms. Thompson was not aware about claimant's safety concerns. Around 5:36 a.m., claimant left Ms. Thompson a voicemail. On the voicemail, claimant was yelling and she used profanity. Ms. Thompson sent claimant a text message that there was not much to say after hearing claimant's message and that she did not deserve to be yelled at. Claimant responded, but it was not readable. Ms. Thompson responded to claimant that she did not feel like fighting and to have a good day. Later claimant came to the employer and Ms. Thompson answered the door. Claimant screamed at the Ms. Thompson that her car was stolen and she had the police report. Ms. Thompson told claimant she did not need the police report. Ms. Thompson then turned around and claimant left.

After claimant left on August 30, 2017, she called the employer on September 1, 2017 and spoke Jeremy. Claimant requested an additional assignment. Jeremy offered claimant an assignment, but it was for a driver and she could not accept the assignment because she did not have a car. Claimant declined the assignment because she was not a fit for the position.

The employer does have a written policy that requires employees to notify the employer once their assignment ends within three working days and request a new assignment. Employer Exhibit 1. The document was separate from any contract of employment. Employer Exhibit 1.

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

For the reasons that follow, the administrative law judge concludes claimant's separation was with good cause attributable to the employer. Benefits are allowed.

It is the duty of an administrative law judge and 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, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa 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. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). 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 evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge reviewed the exhibit that was admitted into evidence. This administrative law judge finds claimant's version of events to be more credible than the employer's recollection of those events.

Iowa Code section 96.5(1)j 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(19) provides:

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:

(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or

refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

The purpose of the statute is to provide notice to the temporary agency employer that claimant is available for and seeking work at the end of the temporary assignment. Although the employer denied that claimant had requested an additional assignment after August 29, 2017, claimant credibly testified she contacted the employer on September 1, 2017 and requested an additional assignment. Claimant's request on September 1, 2017 was within three days of her voluntarily ending her most recent assignment. The administrative law judge finds claimant's testimony during the hearing to be credible. It is noted that claimant testified during the hearing first and she readily admitted that she left a voicemail using profanity for Ms. Thompson on August 30, 2017. Claimant's candor regarding the use of profanity towards Ms. Thompson lends credibility to her testimony that she did request a new assignment from the employer on September 1, 2017. When claimant requested a new assignment, the employer only had an assignment that involved a driving position, but she did not have a car to drive and she had to decline the assignment. Since claimant contacted the employer on September 1, 2017, within three working days of the end of her assignment, requested reassignment, and there was no work available that she could perform, no disqualification is imposed. Benefits are allowed.

**DECISION:**

The September 29, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant's separation from employment was attributable to the employer. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/rvs