

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEVON D BUTCHER
Claimant

ADVANCE SERVICES INC
Employer

APPEAL 20R-UI-03018-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/22/19
Claimant: Appellant (1/R)

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.5-1-j – Separation from Temporary Employer

STATEMENT OF THE CASE:

Devon Butcher (claimant) appealed a representative's January 17, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits due to voluntarily quitting with the Advance Services (employer). Administrative Law Judge Adrienne C. Williamson issued a decision on March 12, 2020, affirming the representative's decision. A decision of remand was issued by the Employment Appeal Board on April 9, 2020. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 6, 2020. The claimant was represented by James Ballard, Attorney at Law, and participated personally. The employer participated by Melissa Lewien, Risk Manager, and Renee Hoyt, Account Coordinator.

The employer offered and Exhibit One was received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary employment service. The claimant performed services off and on from July 21, 2016, through June 25, 2019. He signed a document on July 21, 2016, indicating he was to contact the employer within three working days following the completion of an assignment to request placement in a new assignment. The document did indicate the consequences of a failure to notify the employer. The claimant was given a copy of the document which was separate from the contract for hire.

The claimant suffered a work-related injury on April 10, 2019. He saw a physician on April 15, 2019, who released him to return to work with restrictions. The claimant was given a ten-pound lift/push/pull restriction. He could occasionally walk and stand. The claimant could rarely drive, bend, squat, climb, kneel, twist, or do repetitive movements.

The claimant was offered a job that met his restrictions at Atlantic Rural Community Thrift. The job started on June 24, 2019. The employer completed a written modified duty offer for the claimant to sign. The offer included the claimant's restrictions: "May lift, push/pull up to 10 pounds. Rare walk, stand bend, squat, climb, kneel, twisting repetition, sitting, and operating vehicle". The entrance to the assignment had a ramp which the claimant could use but he had to park in the back. The back had five stairs to climb to enter the building. The claimant signed that he accepted the offer in Atlantic, Iowa, forty-five miles from home. The account coordinator warned the claimant not to work outside his restrictions. She told him to report the request and not perform the work.

On June 24, 2019, the claimant drove himself to work and worked the full day without complaint. The employer's office was next door to the Atlantic Rural Community Thrift and the employer's account coordinator checked in on the claimant three times throughout the day. On June 25, 2019, the claimant worked without complaint until he entered the employer's office at approximately 1:45 p.m.

On June 25, 2019, the claimant drove himself to work. During the day, the claimant was asked to do something outside his restrictions and he performed the work. On the job, the chair was not supportive. At about 1:45 p.m. the claimant entered the employer's office. The claimant said he could not do the job, he wanted his restrictions reassessed, he was working outside his restrictions, and he wanted to see a doctor because he was in pain.

The account coordinator directed him to the nearby Atlantic Medical Center. The claimant assumed the account coordinator knew information about his workers' compensation case that she did not know. The claimant left the office yelling at the account coordinator saying he could not work at all. The claimant completed his last assignment on June 24, 2019, but did not seek reassignment from the employer.

The account coordinator immediately called the workers' compensation carrier to report the claimant's self-report of working outside his restrictions and the events of the day. After that call, the account coordinator spoke with the owner of Atlantic Medical Center and asked about the claimant's work duties. The owner said the claimant was not asked to work outside of his restrictions.

The claimant saw a physician on June 27, 2019, and his restrictions changed. He had a ten-pound lifting restriction, no repetitive bending/twisting, no stairs, and he was to alternate sitting and standing occasionally. The doctor's note did not address, and presumably allowed, pushing, pulling, kneeling, squatting and driving. This note was provided to the employer through the workers' compensation carrier. The employer determined that the claimant could have worked at the Atlantic Rural Community Thrift with the new restrictions.

The claimant filed for unemployment insurance benefits with an effective date of December 22, 2019. He received \$1,293.00 in benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to 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.

Iowa Admin. Code r. 871-24.26(6)b 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:

(6) Separation because of illness, injury, or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

An individual who voluntarily leaves their employment due to an alleged work-related illness or injury must first give notice to the employer of the anticipated reasons for quitting in order to give the employer an opportunity to remedy the situation or offer an accommodation. *Suluki v. Employment Appeal Board*, 503 N.W.2d 402 (Iowa 1993). An employee who receives a reasonable expectation of assistance from the employer after complaining about working conditions must complain further if conditions persist in order to preserve eligibility for benefits. *Polley v. Gopher Bearing Company*, 478 N.W.2d 775 (Minn. App. 1991).

On June 24, 2019, the claimant walked into the employer's office and said he was having problems with his assignment and he was in pain. He left and the employer did not hear from him again. The employer performed an investigation after he left with the assigned employer. It could not investigate the claimant's allegations because he walked off the job. If he had stayed, perhaps the employer could have talked to the claimant about his repeated propensity for failing to follow the doctor's instructions. Contrary to his restrictions, he drove a vehicle to the worksite and failed to say "no" at the assignment when someone asked him to perform a task outside his restrictions. If the claimant needed a more comfortable chair, that issue could have been discussed.

Inasmuch as the claimant did not give the employer an opportunity to resolve his complaints prior to leaving employment, the separation was without good cause attributable to the employer. Benefits are denied.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the employer's testimony to be more credible. The claimant's testimony was internally inconsistent.

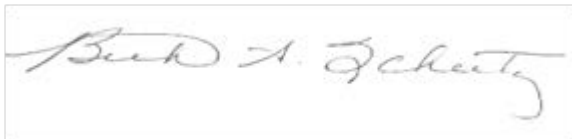
The issue of whether claimant has been overpaid unemployment insurance benefits is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

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. 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>.

DECISION:

The representative's January 17, 2020, decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

The issue of whether claimant has been overpaid unemployment insurance benefits is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.



Beth A. Scheetz
Administrative Law Judge

May 7, 2020
Decision Dated and Mailed

bas/scn