

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CANDACE J CLEMEN**  
Claimant

**APPEAL NO. 14A-UI-04899-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**L A LEASING INC**  
Employer

**OC: 03/23/14**  
**Claimant: Appellant (1)**

Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Candace Clemen filed a timely appeal from the May 2, 2014, reference 01, decision that disqualified her for benefits based on an agency conclusion that she had voluntarily quit without good cause attributable to the employer. After due notice was issued, a hearing was held on May 30, 2014. Ms. Clemen participated. Colleen McGuinty represented the employer and presented additional testimony through Nathan Homb.

**ISSUE:**

Whether Ms. Clemen'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 temporary employment firm. Candace Clemen performed work for the employer in a single full-time, temp-to-hire work assignment. Ms. Clemen began the assignment in February 2014 and last performed work in the assignment on March 14, 2014. The assignment involved processing insurance claims. Ms. Clemen resigned from the assignment in anticipation of her need to take time from the assignment to deal with a non-work-related medical issue relating to her knee. Ms. Clemen had missed a couple days of work one week and one day of work during another in connection with her knee issue. Ms. Clemen was concerned that if she missed additional work in connection with her knee issue that the client business would end her assignment. Ms. Clemen spoke to her supervisor in the assignment and the pair agreed to Friday, March 14, 2014 as Ms. Clemen's last day in the assignment. Had Ms. Clemen wanted to continue in the assignment, the employer and the client business continued to have work for her in the assignment. Ms. Clemen's doctor had not advised her to leave the assignment.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5(1)d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Workforce Development rule 817 IAC 24.26(6)(a) provides as follows:

Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

Iowa Admin. Code r. 871-24.25(33) and (37) provide:

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:

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

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 evidence in the record indicates that Ms. Clemen voluntarily quit the work assignment based on a non-work-related medical issue. The decision to leave the assignment was not based on advice from a licensed and practicing physician who recommended that Ms. Clemen leave the assignment. The weight of the evidence fails to indicate that it was necessary for Ms. Clemen to separate from the assignment. The weight of the evidence indicates that Ms. Clemen elected to separate from the assignment, though the employer and the client business continued to have work for her in the assignment and had not asked her to leave the assignment. Ms. Clemen voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Clemen 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.

**DECISION:**

The claims deputy's May 2, 2014, reference 01, decision is affirmed. 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. The employer's account shall not be charged for benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/css