

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIE A NIELSEN

Claimant

APPEAL NO. 15A-UI-13204-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELITE LABOR SERVICES WEEKLYS LTD

Employer

OC: 11/01/15

Claimant: Respondent (2/R)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 24, 2015, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant had been discharged on October 21, 2015 for no disqualifying reason. After due notice was issued, a hearing was held on December 16, 2015. Claimant Julie Nielsen did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Joseph McDonell of Personnel Planners represented the employer and presented testimony through Michael Spencer.

The administrative law judge notes that the fact-finding materials were not available at the time of the appeal hearing.

ISSUES:

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

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Elite Labor Services is a staffing agency that provides workers to Menasha Packaging in Rock Island, Illinois. Julie Nielsen began her employment with Elite Labor in July 2014 and began her full-time, temporary work assignment at Menasha Packaging at that time. Ms. Nielsen continued to perform work in the assignment until October 21, 2015. After she worked her shift on that date, Ms. Nielsen ceased reporting for work and ceased contact with the employer. The employer continued to have work for Ms. Nielsen in the assignment at the time Ms. Nielsen voluntarily separated from the employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)a 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:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5.

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.

Ms. Nielsen did not participate in the appeal hearing and, thereby, did not present any evidence to contradict the employer's testimony that she had voluntarily quit the employment. Ms. Nielsen did not present any evidence to establish good cause attributable to the employer for separating from the employment or that she had quit for the sole purpose of accepting other employment and had performed work for the new employer.

The evidence in the record indicates that Ms. Nielsen voluntarily quit the employment without good cause attributable to the employer by ceasing to appear for further work in the ongoing full-time temporary work assignment. Accordingly, Ms. Nielsen 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. Nielsen for the period on or after the entry date of this decision.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer will be charged for the overpaid benefits. Iowa Code section 96.3-7-a, -b.

The matter of deciding the amount of the overpayment and whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code section 96.3-7-b is remanded to the Benefits Bureau.

DECISION:

The November 24, 2015, reference 01, decision is reversed. The claimant voluntarily quit the employment, effective October 21, 2015, 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 for benefits paid to the claimant for the period on or after the entry date of this decision.

This matter is remanded to the Benefits Bureau for entry of an overpayment decision and for determination of whether the claimant must repay the overpaid benefits or whether the employer's account may be charged for the overpaid benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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