

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHARLES L STOUDAMIRE
Claimant

REMEDY INTELLIGENT STAFFING INC
Employer

APPEAL 21A-UI-15694-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/14/21
Claimant: Appellant (2)**

Iowa Code §96.5(2)a-Discharge/Misconduct
Iowa Code §96.5(1)- Voluntary Quit
Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment

STATEMENT OF THE CASE:

On July 12, 2021, the claimant/appellant filed an appeal from the July 8, 2021, (reference 02) unemployment insurance decision that disallowed benefits based on claimant voluntarily quitting by failing to report to work for three days in a row and not notifying the employer the reason. The parties were properly notified about the hearing. A telephone hearing was held on September 2, 2021. Claimant participated at the hearing. Employer participated through Vicky Matthias. Exhibit A was admitted. Administrative notice was taken of the claimant's unemployment benefits.

ISSUES:

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

Did the claimant make a timely request for another job assignment?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on November 13, 2017. The employer is a temporary employment agency that places employees in temporary assignments. Claimant last assignment was with General Mills on March 12, 2020. Claimant arrived for the job and worked the job for approximately a half hour and then determined that he could not work the position due to a medical condition where he gets motion sickness. Claimant informed the employer of his condition. The claimant requested another job assignment but the shift supervisor that works onsite for the employer did not have another job available for him. Claimant called the office the next day and asked for another job assignment. The employer did not have another job assignment for him. Claimant proceeded to call back multiple times but the employer did not have job assignments available for the claimant.

Ms. Matthias testified on behalf of the employer. Ms. Matthias does not work at the Cedar Rapids office for the employer. The claimant used the Cedar Rapids when he requested different job assignments.

The employer had a three day notice requirement that required claimants to request a new job assignment within three days of completing a job assignment. This policy was not a separate document from the employer's other policies and onboarding documents. The employer does not have a policy that complies with the specific terms of Iowa Code § 96.5(1)j.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 96.5(1)j 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:

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 lettered paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their work force 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 § 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 § 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 decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as 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 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. *Id.* 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 believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant's version of events to be more credible than the employer's recollection of those events. Ms. Matthias information was based on second-hand information with the assumption that all information is entered into their system. Since Ms. Matthias' testimony was not based on first-hand knowledge the administrative law judge finds the claimant to be more credible about contacting the employer within three working days to request a new job assignment.

The purpose of the Iowa Code § 96.5(1)j statute is to provide notice to the temporary agency employer that the claimant is available for and seeking work at the end of the temporary assignment. Since he contacted the employer within three working days of the notification of the end of the assignment, requested reassignment, and there was no work available, no disqualification is imposed. Additionally, the employer acknowledged their policy did not comply with Iowa Code § 96.5(1)j, this violation of the statute would also allow benefits for the claimant. Benefits are allowed.

DECISION:

The July 8, 2021, (reference 02) unemployment insurance decision is REVERSED. The claimant's separation from employment was attributable to the employer. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

A handwritten signature in black ink that reads "Carly Smith". The signature is written in a cursive, flowing style. The first name "Carly" is connected to the last name "Smith". There is a small horizontal line at the end of the signature.

Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

September 13, 2021
Decision Dated and Mailed

cs/mh