

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CASEY M KEELEY
Claimant

APPEAL NO. 19A-UI-09941-B2T

**AMENDED
ADMINISTRATIVE LAW JUDGE
DECISION**

SEDONA STAFFING INC
Employer

**OC: 11/03/19
Claimant: Appellant (4)**

Iowa Admin. Code r. 871-24.23(26) – Part-Time Worker – Same Wages and Hours
Iowa Code § 96.4-3 – Able and Available
Iowa Code § 96.7(2)A(2) – Partial Benefits
Iowa Code § 96.19(38) – Total and Partial Unemployment
Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated December 6, 2019, reference 02, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on January 13, 2020. Claimant participated personally. Employer participated by Joe Vermeulen and Heather Schmitt. Employer's Exhibit 1 was admitted into evidence. Claimant and employer both waived rights to notice and service regarding the separation issue that was not noticed but was the issue concerning the parties.

ISSUES:

Whether claimant is still employed at the same hours and wages?

Whether claimant is eligible to receive partial benefits?

Whether claimant is able and available for work?

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was last assigned at Quantix from May 1, 2019, and was separated from the assignment, but not the employment, on October 1, 2019. At the time the employer notified the claimant that the assignment had ended, claimant stated that she expressed an interest in moving on to another assignment and employer stated that they would try to place claimant in another job.

At the time of hire, employer has claimant sign for and receive a policy that complies with the specific terms of Iowa Code § 96.5(1)j. (Emp. Ex. 1).

Employer stated that when employer spoke with claimant on October 1, 2019 to inform her of her assignment ending, employer did not remember saying anything about trying to find claimant another job. Employer stated that claimant told her that she needed time to attend to her ailing child and was not currently interested in work. Employer further stated that during that call, claimant stated she'd be in contact when she was ready for new work.

Employer did acknowledge that they attempted to contact claimant within three days after the ending of the previous assignment with the offer of another assignment, but were unable to get ahold of claimant. Employer stated that procedurally they contact all people, even those that say that they aren't currently interested in new assignments.

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.

The matter presented to the administrative law judge was not a matter involving whether claimant was working the same hours at the same rates she'd been employed. As such, and with the approval of all parties, this ruling will focus on the separation issue.

Initially, the administrative law judge must make a credibility determination. 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 Ct. 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*, 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. *State v. Holtz*, Id. Here, claimant provided a specific, vivid testimony as to what happened in her call with employer on October 1, 2019. She was able to state where she was, what she was doing, and the specific terms used by employer's witness. Employer's witness, who deals with this type of call on a daily basis, could not explain the call with near the specificity as claimant. As a result of this, claimant's version of events is deemed more credible.

Employer argues, even if it is the case that employer was trying to place claimant in another job, that claimant did not make the statement herself that she specifically wanted another job upon the ending of her previous assignment. This argument cannot be successful as claimant did ask an open ended, "where do we go from here," and employer responded saying, we're going to try to place you in another job." At this point, employer knew that claimant desired to move ahead with new employment, and claimant reasonably believed that employer was immediately trying to get claimant her next placement. This view is reinforced by employer's attempt within a couple of days to get a new placement for claimant. Unfortunately, the parties were unable to connect.

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.

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of the temporary assignment. In this case, the employer had notice of the claimant's availability because they notified claimant of the end of the assignment and had agreed with claimant that they were looking for a new placement. Since there were no additional assignments, benefits are allowed.

DECISION:

The December 6, 2019, (reference 02) decision is amended in favor of the claimant. The claimant's separation from employment was attributable to the employer. The employer had adequate knowledge about the conclusion of the claimant's assignment and the desire for more work but had no further work available at the time. Benefits are allowed, provided the claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn