

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**BARBARA PAULSEN**

Claimant

**APPEAL 21A-UI-14649-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SEDONA STAFFING INC**

Employer

**OC: 03/21/21**

**Claimant: Respondent (4R)**

Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

On June 27, 2021, Sedona Staffing Inc. (employer/respondent) filed an appeal from the June 24, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding that claimant was discharged on February 24, 2021 without a showing of misconduct.

A telephone hearing was held on August 23, 2021. The parties were properly notified of the hearing. Employer participated by Colleen McGuinty. Branch Manager Terri Herrold participated as a witness for employer. Barbara Paulsen (claimant/respondent) participated personally.

Employer's Exhibit 1 was admitted. Official notice was taken of the administrative record.

**ISSUE(S):**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant's first day of employment was December 7, 2006. Claimant was assigned to Brad Deery Motors from February 1 until February 24, 2021, when the assignment ended.

Claimant testified she learned of the assignment ending from her supervisor at Brad Deery Motors and that employer did not contact her about the assignment ending. Claimant testified that on February 26, 2021 she contacted employer about the assignment ending and to request further assignment. She testified she was told there were no assignments available at that time. Claimant testified she is confident she called employer on that date because she memorialized it in her calendar.

Claimant was aware of employer's policy requiring employees to contact employer and request further assignment within three working days or the employee will be considered to have voluntarily quit.

Herrold testified that on February 24, 2021 she personally informed claimant of the assignment ending. Herrold testified she has no recollection of claimant contacting employer on February 26, 2021, and there is no note of such contact.

Employer contacted claimant less than a week later, on March 3, 2021, to offer her another assignment. Claimant accepted the assignment, which was a one-day assignment on March 12, 2021. That assignment was ultimately cancelled by the client.

Herrold testified claimant did not request further assignment after that time. Herrold also testified that it is employer's practice to note whether an employee has requested further assignment when there is contact made after an assignment has ended. However, Herrold testified the note made by employer when it informed claimant of the March 12, 2021 assignment being cancelled does not indicate whether or not claimant requested further assignment at that time.

Claimant was offered further assignments after the March 12, 2021 assignment but did not accept them. Claimant accepted full-time work elsewhere around May 1, 2021. Claimant remains employed full time elsewhere.

Claimant filed a claim for benefits from the benefit week ending March 27, 2021 and continuing through the benefit week ending June 26, 2021.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons set forth below, the June 24, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding that claimant was discharged on February 24, 2021 without a showing of misconduct is MODIFIED in favor of appellant.

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

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. 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 section 96.8, subsection 5.

- 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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). "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". *Id.* (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions, the case for good cause is stronger where the employee complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

In this case, the claimant did not have the option of remaining employed nor did he express intent to terminate the employment relationship. Where there is no expressed intention or act to sever the relationship, the case must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Employer has not carried its burden of proving claimant voluntarily resigned prior to May 1, 2021, when she began work elsewhere. Claimant credibly testified that she contacted employer as required to request further assignment after each assignment ended. While employer testified claimant did not do so, the administrative law judge finds that testimony was not as reliable as claimant's. Herrold initially testified claimant did not request further assignment after the March 12, 2021 call with employer. However, upon further questioning she acknowledged there was nothing in the note about that call which indicated one way or another whether claimant requested further assignment.

The lack of documentation regarding that call also indicates that while employer's practice may be note whether an employee has requested further assignment, that does not uniformly occur. This in turn calls into question the reliability of other evidence offered by employer regarding whether claimant contacted it and requested further assignment on other dates.

The administrative law judge further finds that claimant was not discharged by employer. Employer contacted claimant less than a week after the alleged separation on or about February 26, 2021 to offer her further assignment, which she did accept. This is inconsistent with a finding that a discharge – or a voluntary quit - occurred at that time.

The administrative law judge does find that claimant voluntarily resigned on or about May 1, 2021 to take other or better work, which she did work in. That separation was not disqualifying and employer shall not be charged for benefits paid after that date.


While the separation from employment was not disqualifying, this matter must be remanded to the Department for a determination as to whether claimant was available for work during the weeks filed. The evidence indicates claimant declined available work and was employed full-time elsewhere during all or a portion of the weeks filed, which may render her ineligible for benefits during those weeks.

**DECISION:**

The June 24, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding that claimant was discharged on February 24, 2021 without a showing of misconduct is MODIFIED in favor of appellant. The separation from employment occurred on or about May 1, 2021 and was not disqualifying and employer shall not be charged for benefits paid after that date.

**REMAND:**

This matter is REMANDED to the Department for a determination as to whether claimant met the availability requirements to be eligible for benefits during the weeks filed.



---

Andrew B. Duffelmeyer  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 478-3528

September 13, 2021  
Decision Dated and Mailed

abd/kmj