

BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

SAMATHA M DEKEYREL

Claimant

and

R J PERSONNEL INC

Employer

HEARING NUMBER: 17BUI-06266

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-1, 24.1-113

DECISION

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Administrative Law Judge's findings of fact are adopted by the Board as its own.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits: Voluntary Quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Generally a quit is defined to be "a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces." 871 IAC 24.1(113)(b). Furthermore, Iowa Administrative Code 871—24.25 provides:

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.

Since the Employer had the burden of proving disqualification the Employer had the burden of proving that a quit rather than a discharge has taken place. The Iowa Supreme Court has thus been explicit: "the employer has the burden of proving that a claimant's departure from employment was voluntary." *Irving v. EAB*, slip op at 57, No. 15-0104 (Iowa 6/3/2016)(amended 8/23/16); On the issue of whether a quit is for good cause attributable to the employer, the Claimant had the burden of proof by statute. Iowa Code §96.6(2). "[Q]uitting requires an intention to terminate employment accompanied by an overt act carrying out the intent." *FDL Foods, Inc. v. Employment Appeal Board*, 460 N.W.2d 885, 887 (Iowa App. 1990), *accord Peck v. Employment Appeal Board*, 492 N.W.2d 438 (Iowa App. 1992).

The Claimant technically could have remained with the Employer by contacting the Employer and letting it know that the assignment had ended and requesting reassignment. She then would have been eligible for benefits while awaiting a new assignment from this Employer. Instead she made herself unavailable to this Employer by working for another temporary employer at the same assignment. We think that this is a quit.

Even where a claimant quits but without good cause attributable to the employer, the claimant may nevertheless collect benefits under certain circumstances. One of these is where the quit is for the purpose of accepting other employment. On this issue the Code provides:

- 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.

Iowa Code §96.5(1)(a). The rules of Workforce further explain:

The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. The employment does not have to be covered employment and does not include self employment.

871 IAC 24.28(5).

The evidence shows that the Claimant did earn wages at the new job which she quit to take. This being the case the Claimant is **not** disqualified under Iowa Code §96.5(1)(a).

Finally, since R J Personnel Inc dba Temp Associates was the employer whom the Claimant quit in order to take another job, under the law **R J Personnel Inc dba Temp Associates's account may not be charged** with benefits paid to the Claimant. Iowa Code §96.5(1)(a); 871 IAC 23.43(5)(no charge to prior employer when quit for other or better job).

The upshot is the Claimant gets benefits but the Employer does not have to pay for them.

DECISION:

The administrative law judge's decision dated July 7, 2017 is **REVERSED**. The Employment Appeal Board concludes that the Claimant quit. The Claimant's quit, however, was not disqualifying. Accordingly, the Claimant **is allowed benefits provided** the Claimant is otherwise eligible.

Benefits relating to wage credits earned with the Employer shall be charged to the unemployment compensation balancing fund under the authority of Iowa Code §96.5(1)(a).

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

RRA/fnv