

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KEANDRE SHUMATE
Claimant

ELITE STAFFING LLC
Employer

APPEAL 21A-UI-07525-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/26/20
Claimant: Respondent (2R)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment
Iowa Code § 96.4(3) – Able to Work and Available for Work
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the March 12, 2021 (reference 07) unemployment insurance decision that allowed benefits to the claimant based upon his separation from employment. The parties were properly notified of the hearing. A telephone hearing was held on May 25, 2021. The claimant participated personally. The employer participated through witness Chris Namanny. The parties waived due notice of the issue of whether the claimant has been able to work and available for work pursuant to Iowa Code § 96.4(3). Employer's Exhibit 1 was admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Did the claimant voluntarily quit by not reporting for an additional work assignment within three business days of the end of the last assignment?
Did the claimant voluntarily quit without good cause attributable to the employment?
Has the claimant been able to and available for work?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was a temporary employee of this temporary employment firm. Upon hire, the claimant had completed paperwork with the employer, including signing the employer's notification policy. He received a copy of the policy. The policy required him to request additional work within three working days of a job assignment ending, otherwise he was determined to have voluntarily quit work.

Claimant was placed on assignment full-time at Thermo Bond Buildings. He worked full-time at that job assignment from July 7, 2020 through September 4, 2020, when his job assignment

ended. Claimant was then scheduled for an interview with Oakleaf on September 17, 2020; however, he did not show up for the interview and did not accept that job because he had other personal matters going on that he needed to attend to, including caring for his pregnant fiancé. He did not request an additional assignment and work was available to him from the employer at that time. However, the employer did not consider him to have permanently separated from employment at that time.

On October 28, 2020, the claimant was placed at Royal Canin to work. He worked in that job placement full-time until November 22, 2020. Prior to his last day at work on November 22, 2020, the claimant was quarantining beginning November 17, 2020 and for a few days after due to a possible exposure from a person who tested positive for COVID-19. However, claimant was back to work on November 22, 2020. After November 22, 2020, the claimant stopped showing up for the job assignment even though work was still available to him. Claimant texted the employer on November 30, 2020 indicating that he ended his time with the employer as he had a baby arriving. See Exhibit 1. He did not return to seek additional employment.

Claimant's administrative records establish that he had received regular unemployment insurance benefits after July 7, 2020 (the date his assignment with Thermo Bond Buildings began). Claimant has also received Federal Pandemic Emergency Unemployment Compensation (PEUC) benefits and Federal Pandemic Unemployment Compensation (FPUC) benefits. An unemployment insurance benefits decision regarding overpayment of PEUC benefits from April 26, 2020 through September 26, 2020 was issued on January 20, 2021 (reference 09) for claimant's April 28, 2019 claim year. An unemployment insurance benefits decision regarding overpayment of FPUC benefits was issued on April 2, 2021 (reference 10) for claimant's April 28, 2019 claim year finding the claimant was overpaid FPUC benefits from April 26, 2020 through June 6, 2020 due to a double payment issued in error. Claimant's administrative records establish that claimant was found not to be able to and available for work from November 8, 2020 through November 28, 2020 in Appeal No. 21A-UI-03564-JC-T.

A fact-finding interview was held on January 13, 2021 regarding the claimant's separation from employment. Kim Luze participated on behalf of the employer and provided information regarding the claimant's voluntary quitting of work to the interviewer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code § 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(23) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

Iowa Admin. Code r. 871-24.23(16) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

The burden is on the claimant to establish that he is able to work and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22. From July 7, 2020 through September 4, 2020, the claimant was working full-time for this employer, placed at Thermo Bond Buildings. As such, he was working to the extent that removed him from the labor market and unemployment insurance benefits are denied effective the benefit week beginning July 5, 2020 through the benefit week-ending September 5, 2020 on that basis.

Effective the benefit week beginning September 6, 2020, claimant was still employed for this employer but not working at a job placement because he had other personal matters to attend to, including caring for his pregnant fiancé. The employer had work available to the claimant but the claimant was unavailable for work due to his personal responsibilities. Claimant then began working full-time at Royal Canin effective October 28, 2020 and was working to such a degree that removed him from the labor market until his last day physically worked at Royal Canin on November 22, 2020. As such, benefits are denied effective September 6, 2020 through November 7, 2020 due to the claimant not being available for work as he was either working to the extent that removed him from the labor market or was not available for work that was available to him due to his personal responsibilities in caring for his fiancé.

Claimant was already found not to be able to and available for work from November 8, 2020 through November 28, 2020 in Appeal No. 21A-UI-03564-JC-T. That decision remains in effect and is not altered by this decision issued today.

Effective the week beginning November 29, 2020, the claimant never returned to work at Royal Canin and notified the employer that he intended to quit his employment via text message. Claimant was not available for work as he was caring for his pregnant fiancé at that time. As such, benefits are denied effective November 29, 2020 and continuing due to the claimant not being able to and available for work pursuant to Iowa Code § 96.4(3).

The next issue is whether the separation from employment is also disqualifying. The administrative law judge finds that it is.

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 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.

Iowa Admin. Code r. 871-24.26(15) provides:

Employee of temporary employment firm.

a. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm within three days of completion of an employment assignment and seeks reassignment under the contract of hire. The employee must be advised by the employer of the notification requirement in writing and receive a copy.

b. The individual shall be eligible for benefits under this subrule if the individual has good cause for not contacting the employer within three days and did notify the employer at the first reasonable opportunity.

c. Good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business; blinding snow storm; telephone lines down; employer closed for vacation; hospitalization of the claimant; and other substantial reasons.

d. Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer, or any other currently acceptable means of communications. Working days means the normal days in which the employer is open for business.

The plain language of the statute allows benefits for a claimant "who notifies the temporary employment firm of completion of an assignment and who seeks reassignment." In this case, the claimant never requested any additional job assignments within three working days after the notification of the end of the assignment and there was continuing work available. In fact, the claimant tendered his written resignation via text message on November 30, 2020. He voluntarily quit due to other personal responsibilities.

Iowa Admin. Code r. 871-24.25(20) 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. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

Because the claimant voluntarily quit due to compelling personal reasons and never returned to the employer to offer his services, his separation from employment is disqualifying. As such, unemployment insurance benefits are denied effective November 30, 2020 due to the claimant voluntarily quitting his employment without good cause attributable to the employer. Claimant has also been disqualified for benefits as mentioned above due to the fact that the claimant was not able to work and available for work. Because the claimant is also denied benefits based on the basis of not being able to and available for work, employer participation during the fact-finding interview regarding the claimant's requirement to repay regular unemployment insurance benefits is moot. All regular unemployment insurance benefits received by the claimant beginning the benefit week of July 5, 2020 is overpaid to the claimant. However, multiple decisions regarding the claimant's overpayment of benefits have been issued. As such, the matter of whether the claimant is overpaid any additional regular unemployment insurance benefits, FPUC benefits, LWA benefits, or PEUC benefits due to his disqualification effective July 5, 2020 based upon him not being able to and available for work will be remanded to the Benefits Bureau for an initial investigation and determination.

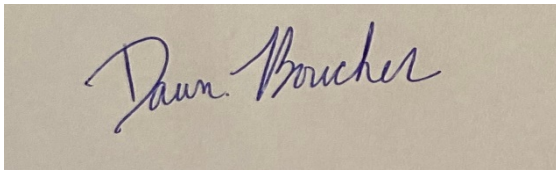
DECISION:

The March 12, 2021 (reference 07) unemployment insurance decision is reversed. The claimant's separation was disqualifying. Unemployment insurance benefits funded by the State of Iowa are denied effective November 30, 2020 and continuing until claimant has worked in and earned wages for insured work equal to ten times his weekly benefit amount after his November 30, 2020 separation date, and provided he is otherwise eligible.

Benefits are also denied based upon the claimant not being able to and available for work effective July 5, 2020 and continuing until the claimant establishes that he is able to and available for work.

REMAND:

The issue of whether the claimant is overpaid any additional regular unemployment insurance benefits, FPUC benefits, PEUC benefits, or LWA benefits due to his disqualification of not being able to and available for work effective July 5, 2020 and continuing is remanded to the Benefits Bureau for an initial investigation and determination.



Dawn Boucher
Administrative Law Judge

June 3, 2021
Decision Dated and Mailed

db/kmj

Note to Claimant

- This decision determines you are not eligible for regular unemployment insurance benefits funded by the State of Iowa under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance ("PUA") section of the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act") that discusses eligibility for claimants who are unemployed due to the Coronavirus.
- **You will need to apply for PUA to determine your eligibility under the program.**
For additional information on how to apply for PUA go to:

<https://www.iowaworkforcedevelopment.gov/pua-information>.

- If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA, please visit: <https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to “Submit Proof Here.” You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments PUA benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.
- If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.