

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICOLL R CARSON
Claimant

APPEAL NO. 16A-UI-13396-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 11/27/16
Claimant: Appellant (2)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Nicoll Carson filed a timely appeal from the December 14, 2016, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on an agency conclusion that Ms. Carson had voluntarily quit on November 28, 2016 without good cause attributable to the employer. After due notice was issued, a hearing was held on January 10, 2017. Ms. Carson participated. Mike Repp represented the employer and presented additional testimony through Sabrina Martin.

ISSUE:

Whether Ms. Carson's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Express Services, Inc., is a staffing agency. Nicoll Carson was employed by Express Services and was assigned to perform work for client business Iowa Direct Equipment & Appraisal in a long-term, part-time assignment that started in April 2013. Iowa Direct sells and installs school lockers, bleachers and basketball hoops. At Iowa Direct, Ms. Carson performed a range of clerical duties that included billing and following up on accounts receivable. Ms. Carson's work hours at Iowa Direct were 9:00 a.m. to 2:00 p.m., Monday through Friday. The employment was not temporary in nature. Rather, Ms. Carson continued in the assignment until November 28, 2016, when she voluntarily quit the assignment. Ms. Carson's immediate supervisor at Iowa Direct was Scott Graen, General Manager. During the assignment, Iowa Direct was owned by Haldeman-Homme, Inc.

As of November 2015, Ms. Carson's primary contact at Express Services was Staffing Sabrina Martin. Shortly after Ms. Martin became the primary contact, Ms. Carson contacted Ms. Martin to express dissatisfaction with not receiving an annual bonus from Iowa Direct. At that time, Ms. Carson told Ms. Martin that she was looking for other work.

In January 2016, Ms. Carson contacted Ms. Martin and expressed interest in an assignment Express Services had posted on its website. At that time, Ms. Martin told Ms. Carson that Express Services could not facilitate a search for another assignment for Ms. Carson while she was still in an Express Services assignment. Ms. Martin told Ms. Carson that Express Services

would only be able to facilitate another assignment if Ms. Carson quit her current assignment with a two-week quit notice.

On November 28, 2016, Ms. Carson submitted a resignation email that she directed to Scott Graen at Iowa Direct. Ms. Carson sent a courtesy copy of her resignation to Ms. Martin at Express Services and to Haldeman-Homme, Inc. In her resignation email, Ms. Carson stated that she was ending her assignment effective November 28, 2016. Ms. Carson wrote that she appreciated her three and half years in the assignment. Ms. Carson stated that she was ending her assignment "due to an uncomfortable work environment." Ms. Carson did not expand on that statement.

On the same day Ms. Carson resigned from the assignment, she contacted Ms. Martin. At the time Ms. Carson initial spoke to Ms. Martin that day, Ms. Martin had not yet reviewed Ms. Carson's resignation email. Ms. Carson told Ms. Martin that she was not going to return to the assignment because she was not being treated fairly. Ms. Carson told Ms. Martin that she was upset that she had once again not received a holiday bonus from Iowa Direct. Ms. Carson told Ms. Martin that she was also upset that Mr. Graen had brought brownies to work and that she did not get any of the food. Ms. Carson was also upset that when the sales people went out for lunch she was not invited to join them. Ms. Carson told Ms. Martin that she was concerned that Mr. Graen might be embezzling from Iowa Direct/Haldeman-Homme. Ms. Martin told Ms. Carson that she could not look for other work for her if she quit an assignment without providing a two-week notice. However, Ms. Martin subsequently had Ms. Carson participate in placement testing and directed her to continue to make weekly contact.

Ms. Carson credibly asserts that during the course of the assignment, Mr. Graen enlisted her assistance with unethical and/or illegal activities. Ms. Carson credibly asserts that the questionable conduct, and her involvement in it, was ongoing for several months. Ms. Carson asserts that Mr. Graen had her shift project expenses associated with Mr. Graen's sales projects to sales projects handled by other salespeople so that Mr. Graen could maximize profit on his projects to the detriment of other sales staff. Ms. Carson credibly asserts that when other sales staff became aware of the conduct, she then had to go back through project billing records to remove the project expenses from the other staff's project. Ms. Carson also credibly asserts that Mr. Graen had her assist in generating bogus invoices that Mr. Graen would then submit to Iowa Direct/Haldeman-Homme, Inc., for sale of equipment to Iowa Direct/Haldeman-Homme, Inc. Ms. Carson asserts that Mr. Graen told her he had removed equipment from the company warehouse in connection with sale of Iowa Direct to Haldeman-Homme. Ms. Carson credibly asserts that Mr. Graen thereafter delivered the equipment to Iowa Direct in a pick-up truck. Ms. Carson credibly asserts that Mr. Graen used a family member's mailing address as the business address to which payment for the equipment should be sent.

Ms. Carson established a claim for benefits that was effective November 27, 2016. Ms. Carson's base period for purposes of the claim consists of the third and fourth quarter of 2015 and the first and second quarter of 2016. Express Services was the sole base period employer. During the base period, Ms. Carson had no other assignments through Express Services other than the assignment at Iowa Direct Equipment & Appraisal.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-1 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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Iowa Admin. Code r. 871-24.25(13) 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:

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

Iowa Admin. Code r. 871-24.25(21) 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:

(21) The claimant left because of dissatisfaction with the work environment.

Iowa Admin. Code r. 871-24.25(22) 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:

(22) The claimant left because of a personality conflict with the supervisor.

On the other hand, quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department*

of *Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d 213 (Iowa 2005).

The weight of the evidence establishes a few different reasons for Ms. Carson's decision quit the assignment effective November 28, 2016, including one concern sufficient to establish good cause attributable to the employer. The trigger for the quit was the absence of a holiday bonus. Ms. Carson received her regular wages for her work in the assignment, was not guaranteed a bonus from her work in the assignment, and the absence of a bonus did not provide good cause for leaving the employment. Likewise, the perceived social slights, based on the lack of food sharing and the absence of an invitation to join the sales staff for lunch, did not provide good cause for leaving the employment. These amounted to general dissatisfaction with the work environment. On the other hand, Ms. Carson testified credibly concerning questionable practices on the part of Mr. Graen, in which practices she was required participate at Mr. Graen's direction. These questionable practices were sufficient to cause a reasonable person in Ms. Carson's situation to become alarmed and to leave the assignment. These concerns were sufficient to establish intolerable and detrimental working conditions and to establish a voluntary quit for good cause attributable to the employment. In the long-term, permanent, at-will assignment, the agency relationship between Iowa Direct and Express Services was sufficient good cause attributable to Express Services based on the actions of Iowa Direct.

Because the administrative law judge concludes the voluntary quit was for good cause attributable to the employer, Ms. Carson is eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits.

DECISION:

The December 14, 2016, reference 01, decision is reversed. The claimant quit the assignment and the employment effective November 28, 2016 for good cause attributable to the employer. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs