

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WILLIAM L HOOD
Claimant

QPS EMPLOYMENT GROUP, INC.
Employer

APPEAL 21A-UI-13791-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/07/21
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment

STATEMENT OF THE CASE:

William L Hood, the claimant/appellant, filed an appeal from the June 7, 2021, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on August 12, 2021. Mr. Hood participated and testified. The employer participated through Mai Lor, unemployment insurance specialist, and Heather Vaske, onsite supervisor. Employer's Exhibit 1 was admitted into evidence. The administrative law judge took official notice of the administrative record.

ISSUE:

Did Mr. Hood 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: Mr. Hood began working for the employer in 2018. He worked as a full-time palletizer on assignment to Cole's Food.

The employer's policy requires employees to contact the employer within three working days after their assignment ends to request a new assignment or the person will be considered to have voluntarily quit. Mr. Hood acknowledged receiving the policy on April 11, 2019.

Mr. Hood was off of work on May 7, 2020 due to medical issues with his foot. He was scheduled to return to work on May 8. On May 7, the employer called Mr. Hood and told him that his assignment was over.

Mr. Hood testified that Crystal from the employer was the person who called him. He played an audio recording of a phone call. The person on the audio recording identified themselves as Crystal from QPS and told Mr. Hood that his assignment was over. Mr. Hood asked the person

for additional work and the person told him that there was no work currently available due to the COVID-19 pandemic.

Ms. Vaske testified that she spoke with Mr. Hood on May 7 and told him that his assignment was over. Ms. Vaske testified that Mr. Hood did not ask for additional work during their conversation. Ms. Vaske testified that a person named Crystal does work for the employer and is Ms. Vaske's supervisor. Ms. Vaske testified that the person on the audio recording was not Crystal, her supervisor, and that if Crystal had called Mr. Hood she would have made a note in the file documenting her call to Mr. Hood. There is no note in the file of Crystal calling Mr. Hood. Ms. Lor also testified that the person on the audio recording was not Crystal.

Mr. Hood testified that he recorded the call because he saw that someone from the employer was calling him the day before he was scheduled to return to work and he was suspicious about why the employer was calling him. Mr. Hood testified that he kept the recording from May 7, 2020 because it was his proof that he, in fact, did ask for a new assignment when the employer told him that his assignment at Cole's Food was over. The administrative record shows that Mr. Hood had filed an initial claim for benefits effective March 7, 2020. Mr. Hood had been filing weekly claims each week as of March 7, 2020, and reporting his wages each week.

REASONING AND CONCLUSIONS OF LAW:

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

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 lettered paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their work force 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:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

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 had 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 accepted means of communications. Working days means the normal days in which the employer is open for business.

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 each temporary assignment so they may be reassigned and continue working. 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."

The decision in this case rests, at least in part, on the credibility of the witnesses. 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 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. *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. *Id.*

Both Mr. Hood and the employer agree that on May 7, 2020, the employer called Mr. Hood and told him that his assignment was over. The core issue to be decided is whether Mr. Hood asked for additional work on that phone call.

Assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using his own common sense and experience, the administrative law judge finds that Mr. Hood did ask for additional work on May 7 when the employer told him that his assignment was over. Mr. Hood provided credible evidence of his asking for work via the audio recording. He also gave a believable explanation for why he made the recording and why he kept it for so long.

Mr. Hood wrote in his June 9, 2021 appeal letter "I have a phone call of me getting laid off and I asked for work on the phone and was told to apply for unemployment..." On July 21, 2021, Iowa Workforce Development provided the employer with a copy of Mr. Hood's appeal letter. It is understandable that the employer would have Ms. Vaske testify since the employer's position is that Ms. Vaske is the person who told Mr. Hood his assignment was over and knew that Mr. Hood did not ask for additional work. However, during the hearing the employer learned that the person on Mr. Hood's audio recording was Crystal. Ms. Vaske and Ms. Lor did deny that the person on the call was Crystal. The employer also chose not to make any attempt to have Crystal testify during the hearing.

In the end, the weight of the evidence favors Mr. Hood's position that he did ask for additional work on May 7, 2020. Therefore, Mr. Hood's leaving employment was with good cause attributable to the employer. Benefits are allowed.

DECISION:

The June 7, 2021, (reference 01) unemployment insurance decision is reversed. Mr. Hood leaving employment was with good cause attributable to the employer. Benefits are allowed.



Daniel Zeno
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August 18, 2021
Decision Dated and Mailed

dz/mh