

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

TERRANCE A PARKS
Claimant

DES STAFFING SERVICES INC
Employer

APPEAL NO. 23A-UI-03810-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/05/23
Claimant: Appellant (5R)**

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

On April 13, 2023, Terrance Parks (claimant) filed a timely appeal from the April 11, 2023 (reference 03) decision that disqualified the claimant for benefits, and that held the employer's account would not be charged for benefits, based on the deputy's conclusion the claimant voluntarily quit on March 3, 2023 by failing to notify the temporary employment firm within three working days of the completion of his assignment, after having been told in writing of his responsibility to notify the firm. After due notice was issued, a hearing was held on April 27, 2023. Claimant participated. Kathy Anderson, Human Resources Manager, represented the employer. Exhibits 1, 2 and A were received into evidence.

ISSUES:

Whether the claimant was laid off, discharged for misconduct in connection with the employment, or voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

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

Terrance Parks (claimant) established an employment relationship with DES Staffing Services, Inc. (DES), a temporary employment agency, in June 2022. The claimant last performed work for the employer in a full-time, temp-to-hire work assignment at Foundation Building Materials (FBM) in Des Moines. The work involved delivering drywall to construction sites. The FBM assignment started on February 3, 2023. The claimant's shift started at 6:00 or 7:00 a.m. and would end whenever the day's work was completed. The claimant last performed work in the FBM assignment on March 1, 2023 and completed his shift that day.

After the claimant's shift ended on Wednesday, March 1, 2023, the claimant notified the FBM supervisor that he would be absent the following day, March 2, 2023, in connection with his aunt's passing and his alleged need to assist with funeral arrangements. The claimant told the FBM supervisor that he did not know when he would be able to return to the assignment.

As an employee of DES Staffing Services, the claimant was subject to the DES absence reporting policy, which required the claimant to call DES at least an hour prior to the start of his shift if he needed to be absent. The absence reporting policy was included in the policies the claimant acknowledged at the start of the DES employment.

The claimant had work in multiple assignments with DES and was aware that DES, rather than the client business, was his employer. The claimant did not notify DES of his need to be absent on March 2, 2023 or that he did not know when he would be in a position to return to work.

On March 2, 2023, FBM notified DES Staffing Services that it was ending the assignment due to attendance and due to the claimant allegedly being on his phone at work. The claimant had not been absent from the assignment prior to March 2, 2023. Though the claimant's timecard reflects the claimant did not work on February 28, 2023, the claimant was off work that day due to the FBM supervisor stating indicating there was no work for claimant to perform that day. DES lacks information pertaining to the phone usage concern.

Despite the FBM assignment coming to an end, DES was willing to locate another assignment for the claimant. DES was unaware that the claimant has told FBM that he did not know when he would be in a position to return to work.

On March 2, 2023, DES representative Selena Alvarez called the claimant's phone number and left a message that the assignment was done and that the claimant should not return to the assignment. The claimant was aware of the call from DES, but the claimant elected not to answer or respond. The claimant advises that his relative's funeral occurred on March 11, 2023 and that he remained in Burlington until after the funeral. The claimant elected not make further contact with DES Staffing Services.

At the start of the DES employment, the employer had the claimant electronically sign to acknowledge DES policies. One policy document the employer had the claimant acknowledge is entitled DES General Policies and Guidelines. That document includes an end-of-assignment notification requirement, as follows:

Temporary Employee Contract: I understand that it is my responsibility to call DES within three (3) business days of my job assignment ending to seek reassignment. Failure to do so shall be deemed a voluntary quit. Please be aware that unemployment benefits may be denied for failure to contact DES upon completion of an assignment. You must seek reassignment prior to filing for unemployment benefits.

The same DES policy document also included a three-paragraph attendance policy and an employee handbook acknowledgment.

The employer does not know whether the claimant received a copy of the DES General Policies and Guidelines document.

REASONING AND CONCLUSIONS OF LAW:

Iowa Administrative Code rule 871-24.1(113) characterizes the different types of employment separations as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is 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.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

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 Iowa Administrative Code rule 871-24.25.

Iowa Code section 96.5(1)f 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:

f. The individual left the employing unit for not to exceed ten working days, or such additional time as may be allowed by the individual's employer, for compelling personal reasons, if so found by the department, and prior to such leaving had informed the individual's employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist the individual returned to the individual's employer and offered the individual's services and the individual's regular or comparable work was not available, provided the individual is otherwise eligible; except that during the time the individual is away from the individual's work because of the continuance of such compelling personal reasons, the individual shall not be eligible for benefits.

Iowa Code section 96.5(1)(j) 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:

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(19) 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:

(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

The weight of the evidence establishes a voluntary quit without good cause attributable to the employer. The quit was effective March 1, 2023. On that day, the claimant voluntarily left the FBM assignment and the DES employment. On that day, the claimant told FBM he would be away for an indefinite period. The claimant left town and elected to remain out of contact with his employer, DES. The claimant did not complete the FBM work assignment. FBM's notice to DES that it was done with the work assignment came *after* the claimant had already voluntarily

left the assignment and the DES employment. Because the claimant did not complete the FBM work assignment, analysis under subsection J of Iowa Code section 96.5(1) does not apply.

The claimant asserts a compelling personal reason for the departure, the alleged need to assist with a non-immediate family member's funeral arrangements. The claimant has provided no obituary, no funeral program, and has otherwise presented insufficient evidence to establish a compelling personal reason to be absent from the employment in connection with the non-immediate family member's passing and funeral. After the claimant voluntarily left the FBM assignment and the DES employment, the claimant elected not to make further contact with DES, meaning that his absence from the DES employment well exceeded 10 working days. Thus, even if there had been a compelling personal reason for the claimant to be absent, the length of the absence exceeded the period for which the law recognizes an exception to the disqualification rule.

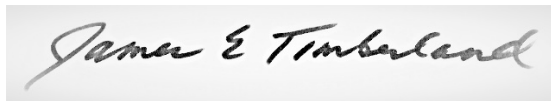
Because the claimant's voluntary quit was without good cause attributable to the employer, the claimant is disqualified for unemployment insurance benefits until he works and has been paid wages for insured work equal to 10 times his weekly benefit amount. The employer's account will not be charged.

DECISION:

The April 11, 2023 (reference 03) decision is MODIFIED without change to the claimant's eligibility for benefits or the employer's liability for benefits. The claimant voluntarily quit the employment effective March 1, 2023. The claimant is disqualified for unemployment insurance benefits until he works and has been paid wages for insured work equal to 10 times his weekly benefit amount. The employer's account will not be charged.

REMAND:

In light of the claimant's testimony that he was out of town and occupied with funeral arrangements for his relative through a March 11, 2023, this matter is REMANDED to IWD Benefits Bureau for determination of whether the claimant has been available for work during the period beginning March 5, 2023.



James E. Timberland
Administrative Law Judge

May 2, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.