

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KIMBERLY MYERS
Claimant

QPS EMPLOYMENT GROUP, INC.
Employer

APPEAL 20A-UI-06732-HP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1)j – Request for Another Job Assignment

STATEMENT OF THE CASE:

Claimant Kimberly Myers filed an appeal from a June 19, 2020 (reference 03) unemployment insurance decision that denied benefits based upon her voluntarily quitting her employment with QPS Employment Group, Inc. (“QPS”) on April 12, 2020. Notices of hearing were mailed to the parties’ last known addresses of record for a telephone hearing scheduled for July 29, 2020. Myers appeared and testified. Mai Lor represented QPS. Melissa Janss appeared and testified on behalf of QPS. Exhibits 1 through 3 were admitted into the record. I also took administrative notice of the claimant’s unemployment insurance benefits records maintained by Iowa Workforce Development.

ISSUES:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?
Did the claimant make a timely request for another job assignment?

FINDINGS OF FACT:

Myers commenced full-time employment with QPS on January 28, 2020. QPS is a temporary employment agency. QPS placed Myers at Agri Industrial Plastics. Myers was a machine operator at Agri Industrial Plastics. Jennifer Hughes was Myers’s immediate supervisor.

On February 28, 2020, Myers reported she injured her left wrist while working for QPS at Agri Industrial Plastics on February 27, 2020. Myers reported she was experiencing numbness and pain in her left wrist and she could not hold onto parts. Myers reported QPS sent her to a walk-in clinic and a physician told her she likely had carpal tunnel syndrome. Myers did not physically return to her assignment at QPS.

Myers’s physician imposed restrictions. She was off work for a few days and QPS offered her a temporary transitional offer of employment on March 2, 2020. QPS agreed to provide Myers with light-duty work and to pay her at her same hourly rate.

Due to the Covid-19 outbreak, QPS closed the office and sent Myers home. Myers had an appointment at the end of March.

On March 23, 2020, Myers received a letter from the third-party administrator for QPS notifying her that her workers' compensation claim was being denied because a physician had determined her condition was not work-related and her benefits were being cancelled. Myers stopped receiving payments on March 30, 2020.

Myers produced her call logs, Exhibits 2 and 3. Her call logs show she made calls on March 16, 2020 to QPS and April 17, 2020. There is no evidence Myers contacted QPS after her workers' compensation claim had been denied on March 23, 2020 by the third-party administrator, or after she stopped receiving payments until April 17, 2020.

On April 17, 2020, Myers contacted QPS. She spoke with Janss. Myers reported she told Janss she was not being paid any more for light-duty work and that Janss told her to contact QPS's third-party administrator in March 2020. Janss told Myers the third-party administrator had denied her workers' compensation claim and that she told her to contact the third-party administrator if she had any questions. Janss testified Myers did not ask for any work. Janss reported the last day QPS paid Myers was on April 5, 2020.

Myers testified she asked for another work assignment and QPS did not have any work for her. Myers relayed she did not believe she could engage in any repetitive work due to her wrist condition. Janss reported Myers continued to have work restrictions through April 22, 2020. Janss testified QPS has other employees with work injuries and that if Myers had requested another assignment, QPS would have reached out to other clients to see if they could make accommodations for Myers. Janss testified Myers's assignment at Agri Industrial Plastics ended on April 22, 2020.

REASONING AND CONCLUSIONS OF LAW:

Myers was a temporary employee of a temporary employment firm. 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 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 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.

The Iowa Supreme Court has held a “voluntary quit” means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer.” *Wills v. Emp’t Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989). A voluntary quit requires “an intention to terminate the employment relationship accompanied by an overt act carrying out the intent.” *Peck v. Emp’t Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). “Good cause” for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm’n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant’s departure from employment was voluntary. *Irving v. Emp’t Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016).

QPS provided Myers with a copy of a three-day reassignment policy on January 22, 2020. On March 23, 2020, the third-party administrator denied Myers’s workers’ compensation claim. Myers produced her call logs, Exhibits 2 and 3. Her call logs show she made calls on March 16, 2020 to QPS and April 17, 2020. There is no evidence Myers contacted QPS after her workers’ compensation claim had been denied on March 23, 2020 by the third-party administrator, or after she stopped receiving payments the first week of April until April 17, 2020, when she spoke with Janss. Janss testified Myers’s assignment with Agri Industrial Plastics ended effective April 22, 2020. This date has no relation to the decision in this case. According to QPS, Myers had already quit. I do not find Myers should be disqualified from receiving benefits under Iowa Code section 96.5(1)j. Myers was receiving workers’ compensation benefits and she was confused as to her status and QPS did nothing to assist with the confusion. Janss’s testimony at hearing was unclear regarding the date of separation. I do not find Myers voluntarily quit her employment with QPS. There was no evidence presented that QPS had any assignment available for Myers, consistent with her restrictions.

871 Iowa Administrative Code 24.25(36) 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 following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

24.25(36) The claimant maintained that the claimant left due to an illness or injury which was caused or aggravated by the employment. The employer met its burden of proof in establishing that the illness or injury did not exist or was not caused or aggravated by the employment.

871 Iowa Administrative Code 24.26(6) also 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:

24.26(6) Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job. In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

As noted above, I did not find Myers quit. Even assuming she did, Myers credibly testified her work for QPS aggravated her left wrist condition. No medical reports were produced at hearing supporting Myers work did not aggravate her left wrist condition. Myers testified she was unable to perform the essential functions of her position with QPS at Agri Industrial Plastics. QPS temporarily assigned her to light-duty in the office, and then paid her for doing no work from home, until it stopped paying her. There was no evidence QPS had an assignment consistent with Myers's left wrist restrictions or that it could, in fact, accommodate her. Even assuming Myers quit, I find the quit was with good cause attributable to her employer. Benefits are allowed.

DECISION:

The June 19, 2020 (reference 03) unemployment insurance decision denying unemployment insurance benefits is reversed in favor of the claimant/appellant. Benefits are allowed, provided the claimant is otherwise eligible.



Heather L. Palmer
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August 5, 2020
Decision Dated and Mailed

hlp/scn