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

SHARIKA L HOUSE Claimant **1ST CLASS STAFFING LLC** Employer	**APPEAL NO. 23A-UI-00645-JT** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 01/01/23** **Claimant: Appellant (2)**

Iowa Admin. Code r. 871-24.26(19) – Separation From Temporary Employment

STATEMENT OF THE CASE:

On January 23, 2023, Sharika House (claimant) filed a timely appeal from the January 23, 2023 (reference 01) decision that disqualified her 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 January 7, 2023 without good cause attributable to the employer. The claimant requested an in-person hearing. After due notice was issued, a hearing was held on February 21, 2023 at the Cedar Rapids IowaWORKS Center. Claimant participated. The employer did not appear and did not participate. Exhibits A through F were received into evidence.

ISSUES:

Whether the claimant was laid off, was discharged for misconduct in connection with the employment, or voluntarily quit without good cause attributable to the employer.
Whether the claimant's separation from the temporary employment agency 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:
Sharika House (claimant) first established employment with 1st Class Staffing, L.L.C. during the first quarter of 2022 and separated from the employer during that same quarter. The employer is a temporary employment firm and had an office in Iowa City.

In December 2022, Ms. House returned for a second period of employment with 1st Class Staffing. On December 5, 2022, Ms. House began in a full-time, temporary work assignment at Hood Container in Iowa City. Ms. House last performed work in the assignment on December 12, 2022. The work hours were 8:00 a.m. to 4:30 p.m., Monday through Friday. The assignment duties involved building product displays for Proctor & Gamble products, specifically Round Up. There were several different task stations in the workplace. Ms. House would rotate through most of them during her work day. One work station involved building boxes. Another involved regularly lifting five-pound and 10-pound containers of product. Another involved building pallets of product. Some tasks were easier or more difficult than others.

On Monday, December 12, 2022, Ms. House was in a rear-end collision during her lunch break from the assignment. The front of Ms. House's vehicle hit the back of the vehicle in front of her that had suddenly stopped. Ms. House suffered injury to her back and her left wrist that turned out be a pulled back muscle and a sprained wrist. Ms. House is right-handed. Ms. House sought medical evaluation at University of Iowa Urgent Care. The physician's assistant who evaluated Ms. House released her to return to work without restrictions the next day, December 13, 2022, and provided a medical note to that effect.

On Tuesday, December 13, 2022, Ms. House notified the employer that she was still sore from her accident, was going to take the day off to rest, but would return to work the next day. Ms. House attached a copy of the accident report and the note from the urgent care provider.

On Wednesday, December 14, 2022, the employer notified the claimant that if she required light-duty work, the employer would need a doctor's note stating a need for light-duty. Ms. House responded that she had already sent the medical note. The employer responded and accurately pointed out that provided medical note did not include restrictions. The employer added that if Ms. House needed workplace accommodations the employer would need a doctor's note that said so. The employer asked whether the claimant wanted to "take the day off" until she was healed. Ms. House replied that she would get another medical note and asserted the provider had told her to do light-duty work.

On the morning of Thursday, December 15, 2022, Ms. House notified the employer she would return to work the following Monday, meaning that she planned to remain off work for the remainder of the week. Ms. House told the employer that she was able to get her medical restrictions updated and that she needed to get the document printed.

Ms. House did not return to the assignment on Monday, December 19, 2022. On that morning, Ms. House notified the employer she was taking the day off due to having a sick child. The employer asked the claimant to use the attendance software application to document the absence. The employer stated the employer hoped her child felt better and to let the employer know if Ms. House needed anything else.

On December 20, 2022, Ms. House sought a second opinion regarding her back and wrist injuries. At that time, the doctor diagnosed the sprained wrist and pulled back muscle. The doctor provided a medical note that released Ms. House to perform light-duty work and that restricted her from lifting more than 30 pounds. The lifting restriction prevented Ms. House from performing some of her work assignment duties, such as the palletizing work, but did not prevent Ms. House from performing all of the tasks performed in the Hood Container assignment. The claimant was still sore from the auto collision.

On the afternoon of December 20, 2022, Ms. House sent the following text message to the employer:

> Hey its Sharika House I should've got in contact sooner but due to my son being ill and my injuries sustained during my car accident I had to see the doctors again for more treatments…they are having me take so[me] physical therapy also including light duties upon returning to work…so basically I'll just be back Monday after the holiday.

The employer replied, " Ok! There is not work on the next 2 Mondays because it is a government holiday!" Ms. House acknowledged the employer's message.

On December 22, 2022, the employer sent the claimant notice that her assignment with Hood Contained had been extended.

Ms. House most recently saw a doctor regarding her wrist and back on December 28, 2022. Ms. House obtained a medical note in connection with the medical appointment. The note stated:

> Sharika House was seen in Internal Medicine clinic on 12/28/22 for follow up of chronic medical problems and follow up on an acute issue following a motor vehicle accident. Please excuse her from work on 12/28/22. Following her MVC [motor vehicle collision] she has new wrist pain that is exacerbated by heavy lifting, please be accommodating as possible as she returns to work. She will work with physical therapy to strengthen her left wrist following injury.
>
> She is able to return to work on 12/29/22.

Ms. House started physical therapy on December 29, 2022. The treatment plan called for Ms. House to participate in six weekly physical therapy sessions. Ms. House last had a physical therapy session on January 4, 2023. Ms. House did not complete the six physical therapy treatments sessions. The physical therapist assigned exercises for Ms. House to perform at home. Ms. House treated her pain issues with over-the-counter Tylenol and determined on her own when she felt well enough to return to work.

On the morning of Tuesday, January 3, 2023, Ms. House sent the employer a copy of a medical notice she obtained on December 28, 2022.

The employer responded as follows:

> Hi Sharika,
> Since you are requesting accommodations, we will need an ADA form filled out so we know the severity of your injury. Our risk team then reviews it and we can proceed after that. We want to make sure you are safe on the site and with the position you are working.
>
> Hood container does not offer restrictions unless reviewed and approved by experts. There is no specific details of your restrictions, so we need the doctor just to be clear about the exact weight and activity allowed.
>
> What is a good email to send the ADA form to?

The claimant promptly provided the employer her email address.

On the morning of January 4, 2023, the claimant notified the employer that she had not received the ADA form the employer wanted her to use to update her medical restrictions information.

Ms. House never received the ADA form from the employer and was not allowed to return to the Hood Container assignment.

On January 11, 2023, the employer sent the claimant notice that the “The job at Hood Container Iowa IA – Primary has not worked out, but please go to Jobs Available to take another job.”

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)(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 evidence in the record indicates a January 4, 2023 separation from the temporary employment firm that was for good cause attributable to the employer. The employer did not participate in the appeal hearing and did not present any evidence. The evidence indicates the claimant was released to return to work effective December 29, 2022 without specific medical restrictions and with only the vague statement that her wrist was “exacerbated by heavy lifting, please be accommodating as possible as she returns to work.” Though the employer initially indicated a willingness to discuss reasonable accommodations, the employer prevented that discussion from moving forward by not providing the ADA form to the claimant. The employer effectively terminated the assignment at that time. There is no indication in the record that the claimant voluntarily separated from the employment. The claimant merely designed to temporarily avoid the heaviest, most physically taxing task assignment at Hood Container. An employer has an obligation to provide an employee with reasonable accommodations that enable the employee to continue in the employment. See *Sierra v. Employment Appeal Board*, 508 N.W. 2d 719 (Iowa 1993). The employer presented no evidence to prove the employer complied with the notice requirements set forth at Iowa Code section 96.5(1)(j). Accordingly, that subsection of the statute does not apply. The claimant fulfilled her obligation to the

employer at the time the employer terminated the assignment. The claimant is eligible for benefits provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The January 23, 2023 (reference 01) decision is REVERSED. The claimant involuntarily separated from the temporary employment firm effective January 4, 2023 with 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.

James E. Timberland
Administrative Law Judge

March 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.