

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KEREN M VEGA CARTEGENA**  
Claimant

**APPEAL NO. 17A-UI-03235-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EXPRESS SERVICES INC**  
Employer

**OC: 12/25/16  
Claimant: Appellant (4)**

Iowa Code Section 96.5(1) – Voluntary Quit  
Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Keren Vega Cartagena filed a timely appeal from the March 15, 2017, reference 03, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Ms. Vega Cartagena voluntarily quit on February 27, 2017 without good cause attributable to the employer. After due notice was issued, a hearing was held on April 17, 2017. Ms. Vega Cartagena participated personally was represented by attorney Diane Wilson. Ms. Wilson presented testimony through Ms. Vega Cartagena, Raphael Figueroa and Jonathan Kramer. Holly Eichmann, owner, represented the employer. The administrative law judge took official notice of the following agency administrative records: DBRO and KCCO. Spanish-English interpreter David Taveras of CTS Language Link assisted with the appeal hearing.

**ISSUES:**

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

Whether the claimant has been able to work and available for work since she established the additional claim for benefits that was effective February 19, 2017.

Whether this employer's account may be charged for benefits.

Whether the claimant had been able to work and available for work since February 19, 2017, the effective date of the additional claim for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Express Services, Inc., is a temporary employment agency. Keren Vega Cartagena, hereafter referred to as the claimant, was employed by Express Services and performed work in a single, full-time temp-to-hire work assignment at Winnebago Industries in Forest City. The claimant began the assignment in October 2016 and last performed work in the assignment on February 22, 2017.

The claimant's work was labor-intensive. The work required that the claimant spend a substantial amount of time her knees. The employer issued knee pads to the claimant, but the claimant found the employer-issued knee pads too tight.

At the start of the new year, the claimant contacted Express Services and requested a new assignment. The claimant made additional requests for a new assignment prior to her decision to voluntarily separate from the assignment on February 22, 2017. The claimant had been to see a doctor regarding her knees and her back. The claimant did not provide the employer with any medical documentation in support of need for accommodations in the Winnebago assignment or a medically-based need for a different assignment. Prior to quitting the employment, the claimant did not tell Express Services that she would quit if medical accommodations were not provided.

Prior to separating from the assignment, the claimant had been assaulted in the workplace on a number of occasions. The claimant attributes the conduct to racism. The claimant is a Spanish-speaking person. On the multiple occasions that the claimant asked Express Services for a new assignment, she referenced being the victim of assault at Winnebago. The claimant had a person with her to interpret and communicate her concerns to the employer in English. The most recent assault occurred on February 21, 2017, the day before claimant worked her last day in the assignment. On that occasion, a coworker used her elbow to hit the claimant in the head while the two were working inside an RV unit. The claimant reported the incident to her supervisor at Winnebago. The claimant had also reported prior incidents of assault to her supervisor.

In connection with the February 22, 2017 employment separation, the claimant established an additional claim for benefits that was deemed effective February 19, 2017. The claimant thereafter made seven weekly claims for the benefit week that ended February 25, 2017 through the benefit week that ended April 8, 2017. During the benefit week that ended February 25, the claimant did not apply for work other than asking Express Services for a different assignment. During the week that ended March 4, 2017, the claimant applied for work with three prospective employers. During the weeks that ended March 11, March 18, March 25, and April 1, the claimant applied for work for only prospective employer per week. During the benefit week that ended April 8, 2017, the claimant applied for work with on prospective employer, received an offer of employment, and commenced new full-time employment on Wednesday, April 5, 2017.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 96.5-1-d 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:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered

to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Workforce Development rule 817 IAC 24.26(6) provides as follows:

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.

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.

The evidence in the record establishes two bases for the claimant's decision to leave the assignment and the employment. The first was the physically-taxing nature of the work and impact on the claimant's back and knees. The weight of the evidence fails to establish that it was necessary for the claimant to leave the assignment due to illness or injury. The claimant provided the employer with no medical documentation to support her assertion that she needed accommodations in the assignment or a different assignment. The claimant has provided the Appeals Bureau with any medical documentation supporting her assertion that it was medically necessary for her to leave the employment. To the extent that the quit was based on health factors, the weight of the evidence establishes fails to establish good cause attributable to the employer for the decision to leave the employment.

The second basis for the quit concerned assaultive behavior. 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 claimant and her two additional witnesses testified to repeated instances in which the claimant was assaulted in the workplace, along with multiple reports to the Winnebago supervisor and to Express Services staff. The employer failed to present sufficient evidence, and sufficiently direct and satisfactory evidence, to refute the claimant's assertion that she was repeatedly assaulted in the assignment, including on the day before she worked her final day in the assignment. When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See *Crosser v. Iowa Dept. of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The employer witness had no contact with the claimant. The employer witness elected not to have Express Services staff who had contact with the claimant participate in the appeal hearing. The weight of the evidence establishes good cause attributable to the employer for the voluntary quit based on the intolerable and detrimental working conditions created by the workplace violence.

The claimant voluntarily quit the employment on February 22, 2017 for good cause attributable to the employer. Accordingly, the claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

Iowa Code § 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The evidence in the record establishes only one benefit week during which the claimant demonstrated an active and earnest search for new employment. The one week was the benefit week that ended March 4, 2017. The claimant is eligible for benefits for that one week, provided she meets all other eligibility requirements. For the remainder of the weeks between February 19 and April 8, 2017, the claimant failed to demonstrate an active and earnest search for new employment and, therefore, is not eligible for benefits.

**DECISION:**

The March 15, 2017, reference 03, decision is modified as follows. The claimant quit the employment effective February 22, 2017 for good cause attributable to the employer based on intolerable and detrimental working conditions. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

The claimant was able to work and available for work within the meaning of the law during the benefit week that ended March 4, 2017. The claimant is eligible for benefits for that week, provided she meets all other eligibility requirements.

The claimant did not meet the work search requirement and, therefore, was not eligible for benefits during the benefit weeks that ended February 25, March 11, March 18, March 25, April 1 and April 8, 2017.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/rvs