

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

DANA M CONNER DELONGPRE
Claimant

APPEAL NO. 19A-UI-00050-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

QPS EMPLOYMENT GROUP INC
Employer

OC: 12/02/18
Claimant: Respondent (1)

Section 96.5-1-j – Separation from Temporary Employer
Section 96.5-1-d - Voluntary Quit for Medical Reasons
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

QPS Employment Group (employer) appealed a representative's December 27, 2018, decision (reference 01) that concluded Dana Conner DeLongpre (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 17, 2019. The claimant participated personally. The employer participated by Jennifer Yang, Unemployment Specialist, and Jason Sheldahl, Onsite Manager. Exhibit D-1 was received into evidence. The employer offered and Exhibit 1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary employment service. The claimant performed services from February 6, 2017, through November 30, 2018. She digitally signed a document on February 6, 2017, indicating she was to contact the employer within three working days following the completion of an assignment to request placement in a new assignment. The document did indicate the consequences of a failure to notify the employer. The claimant was given a copy of the document which was separate from the contract for hire.

The claimant was granted Family Medical Leave (FMLA) for a non-work related condition. She was on full-time leave from August 6 to September 21 and October 8 to 31, 2018. She returned to work on November 1, 2018, with restrictions. She could work eighteen hours per week with minimal bending and lifting. The employer accommodated her restrictions. On November 14, 2018, the claimant provided the employer with another doctor's note indicating she could work thirty hours per week. She had no other restrictions. The doctor released her to return to work without restrictions on November 26, 2018. The claimant used partial FMLA through November 26, 2018.

On November 14, 2018, Titan's manager and the employer's representative met with the claimant. The claimant learned that full-time work would not be available when the claimant was released to return to work without restrictions on November 26, 2018. Titan's manager did not see any full-time work in the foreseeable future for the claimant. He thought there might be as much as thirty hours of work per week available for her.

On November 15, 2018, the claimant gave the employer a letter stating, "I am unable to continue my position at Titan Tire at the 30 hour per week offer". She indicated her last day of work would be November 30, 2018. The claimant knew the employer must offer her a position with nearly identical pay, benefits, and other working conditions after she returned from FMLA. She considered the loss of a quarter of her hours was not an acceptable offer.

Every day from November 15 to 30, 2018, she asked the employer if another assignment was available that would meet the qualifications. On November 19, 2018, the employer offered her an assignment but it did not have benefits. She refused the offer and no other offers were made to her.

The claimant filed for unemployment insurance benefits with an effective date of December 2, 2018. The employer participated personally at the fact finding interview on December 26, 2018, by Jennifer Yang.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not separated from employment for a disqualifying reason.

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.

Under the Iowa Code the employer must advise the claimant of the three day notice requirement and give the claimant a copy of that requirement. The notice requirement must be separate from the contract for hire. The employer and the claimant met the requirements of Iowa Code Section 96.5-1-j.

Iowa Code section 96.5(1)d 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:

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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). A claimant is not disqualified for leaving employment if he or she (1) left employment by reason of illness, injury or pregnancy; (2) on the advice of a licensed and practicing physician; (3) and immediately notified the employer or the employer consented to the absence; (4) and when certified as recovered by a physician, the individual returned to the employer and offered services but the regular or comparable suitable work was not available. *Area Residential Care, Inc. v. Iowa Department of Job Service*, 323 N.W.2d 257 (Iowa 1982). A "recovery" under Iowa Code Section 96.5-1-d means a complete recovery without restriction. *Hedges v. Iowa Department of Job Service*, 368 N.W.2d 862 (Iowa App. 1985).

The claimant left work due to a medical condition under the advice of her physician. The employer consented to her leaving. The claimant provided certification that she had recovered. In addition, the claimant has offered her services to the employer but regular or comparable suitable work was not available. The pay was twenty-five percent reduced. The claimant has

met the requirements of the statute and, therefore, is eligible to receive unemployment insurance benefits.

DECISION:

The representative's December 27, 2018, decision (reference 01) is affirmed. The claimant was separated from the employer for good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs