

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANTHONY THOMPSON
Claimant

SEDONA STAFFING INC
Employer

APPEAL 21A-UI-02616-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/27/20
Claimant: Appellant (2)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.5-1-j – Separation from Temporary Employer

STATEMENT OF THE CASE:

Anthony Thompson (claimant) appealed a representative's December 30, 2020, decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits after his separation from work with Sedona Staffing Inc (employer).

A hearing was conducted on March 9, 2021. The claimant participated. The employer participated through Unemployment Insurance Administrator Colleen McGuinty. The administrative law judge took official notice of the administrative file.

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 March 9, 2020 through August 27, 2020. The claimant signed a document on February 28, 2020, indicating he was to contact the employer within three 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 not separate from the contract for hire.

The site employer ended the claimant's assignment on September 1, 2020. After the assignment ended, the claimant called the employer and spoke to Julie (last name unknown) on September 3, September 4, and September 7, 2020, in order to seek another assignment.

Unemployment Insurance Administrator Colleen McGuinty did not have any personal knowledge of experience regarding the claimant's separation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment with good cause attributable to the employer.

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 decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

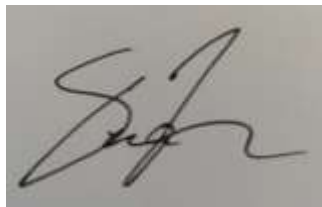
After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using his own common sense and experience, the administrative law judge finds the claimant's version of events to be more credible than the employer's recollection of those events.

The administrative law judge finds the claimant more credible because he had personal knowledge and experience regarding the events. The employer opted to not provide its employee who had personal knowledge and experience regarding the circumstances of the claimant's separation. The employer also did not even provide this individual's notes. In this context, it is difficult for the administrative law judge to put faith in the words of someone making statements in direct contrast with the claimant's testimony.

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of the temporary assignment. In this case, the claimant repeatedly called Sedona for reassignment after his assignment ended. Benefits are allowed.

DECISION:

The December 30, 2020, reference 02, decision is reversed. The claimant's separation from employment was attributable to the employer. The claimant had adequate contact with the employer about his availability as required by statute. Benefits are allowed, provided the claimant is otherwise eligible.



Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

March 15, 2021
Decision Dated and Mailed

smn/ol